

visits to Credit Karma and Match.com.²² In short, pen/trap information can reveal a significant amount of highly personal information without revealing any “content.”

Current Standard

Consequently, what current limitations are provided for the use of a pen/trap device?

Unfortunately, the answer is not many. In *Smith v. Maryland*, the Court held that the Fourth Amendment does not protect pen registers.²³ In light of this situation, Congress enacted the Pen Trap Statute (Title III of ECPA, codified in 18 U.S.C. §§ 3121–3127) to enact statutory rules for their use.²⁴ Under the statute, to obtain a pen/trap order, an application must be submitted to a court. The applicants must identify themselves and the law enforcement agency requesting the order, and they must certify that “the information likely to be obtained by such installation and use is relevant to an ongoing investigation.”²⁵

However, there is no requirement that in their submission to the court the government provide any evidence of relevance. Therefore, the issuing court must take the government’s word without question with no judicial review concerning whether this standard has been sufficiently established.²⁶ The standard for approval is so low as to be nearly worthless: the request does not require justification by evidence, and the judge is required to approve every request. It is, in effect, a rubber stamp.²⁷ But even if this was not the case, a relevance standard is particularly weak, and

²² *Soybel*, 13 F.4th at 593 (stating what the pen/trap device had captured while it had been applied to the defendant’s server).

²³ *See generally Smith*, 442 U.S. 735.

²⁴ Buckman, *supra* note 3, at § 2 (reciting the history of the pen/trap statutes).

²⁵ 8 U.S.C. § 3122(b)(1)-(2).

²⁶ *See In re Application of United States*, 846 F. Supp. 1555, 1559 (M.D. Fla. 1994); *see also United States v. Fregoso*, 60 F.3d 1314, 1320 (8th Cir. 1995) (“The judicial role in approving use of trap and trace devices is ministerial in nature.”)

²⁷ *See, e.g.,* Ctr. for Democracy & Tech., *CDT’s Analysis of S. 2092: Amending the Pen Register and Trap and Trace Statute in Response to Recent Internet Denial of Service Attacks and to Establish Meaningful Privacy Protections* (2000), <https://cdt.org/wpcontent/uploads/security/000404amending.shtml> (articulating the implications of the standard for pen/trap devices).

“it is hard to imagine how the government could fail to make this showing regardless of how illegitimate its desired use of the pen register might be.”²⁸

Proposed Reform

Considering the sheer weight of information that a pen/trap device may reveal and the weakness of the current limitations placed upon their use, I call for the above standard to be raised to that of the SAF threshold of a 2703(d) order: an intermediary level between mere relevance and the high bar of probable cause. As an aside, holding the pen/trap device order to the same standard as a 2703(d) order is inherently logical. This is because, in essence, they reveal the same information but on different time horizons: a pen/trap device is for active surveillance entering the future, and a 2703(d) order is for historical data from the past. To illustrate, if the government wants to track to whom an individual is sending emails, they will apply a pen/trap device. In contrast, if they want to learn to whom an individual has sent and received emails for the past six months, they will request a 2703(d) order.²⁹ As such, for the two to share the same legal standard is common sense.

To obtain a 2703(d) order, “the governmental entity [must] offer specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.”³⁰ This is an intermediary standard between relevancy and probable cause, derived, as the Tenth Circuit has noted, from the Supreme Court’s decision in *Terry v. Ohio*.³¹ Its purpose is to guard against “fishing expeditions” by law enforcement.³² Indeed, the most important distinction is that the SAF determination is not conclusory. Law enforcement may not merely

²⁸ Solove, *supra* note 13, at 1701, 1729.

²⁹ See Jarrett & Bailie, *supra* note 4, at 130-32, 150-54 (comparing and contrasting the information revealed by 2703(d) orders and pen/trap devices).

³⁰ 18 U.S.C. § 2703(d).

³¹ See *Terry v. Ohio*, 392 U.S. 1 (1968) (providing an intermediary standard between a subpoena’s relevancy requirement and the probable cause standard for search warrants).

³² H.R. Rep. No. 102-827, at 31-32 (1994), reprinted in 1994 U.S.C.C.A.N. 3489, 3511-12.

inform the court that SAF exist to satisfy the standard. Rather, they must offer evidence to that effect to the court in their application, and the court must then make an independent determination.³³ Implementing this standard for the use of pen/trap devices would thus bring the judiciary into a regulatory role offering a check on potential prosecutorial overreach. It represents an additional check on the power of law enforcement. No longer would a judge have to approve every application; instead, law enforcement would have to clearly demonstrate that they have SAF and that what they ask for is relevant and material to the investigation at hand. It would be a welcome change to what currently exists, where law enforcement has access to incredibly private information merely on their word. Although, in practice, a short factual summary of the investigation and the role this information serves in advancing the investigation should satisfy this criterion, this increased standard would still be an additional bar—an extra barrier of protection—against abuse.³⁴

I am not advocating for a probable cause standard for the use of pen/trap devices because this is the highest legal standard for the use of an investigatory tool.³⁵ It is what is demanded of search warrants and what is required to institute a wiretap. These tools demand greater proof to justify their use, as they involve a greater invasion of privacy (i.e., they allow law enforcement to access content information). In addition, though there might be overlap at the margins, there is an inherent difference between content and non-content. What I write in an email is inherently more private, and accessing it is a greater intrusion on the part of law enforcement than observing to whom I sent it. Creating a universal probable cause standard for all communicative information would essentially equate content and non-content in the eyes of the law. Moreover, for practical

³³ See *United States v. Kennedy*, 81 F. Supp. 2d 1103, 1109-10 (D. Kan. 2000) (concluding that a conclusory application for a 2703(d) order “did not meet the requirements of the statute.”)

³⁴ Kerr, *supra* note 20, at 639 (arguing that an increase in applicable standard would create additional protections).

³⁵ *Id.* at 621 (describing the various legal standard that need to be met for the use of certain investigatory tools).

reasons, probable cause should not be the standard. The imposition of probable cause for pen/traps would vastly limit the ability of law enforcement to conduct investigations effectively. It would impose a Catch-22 upon law enforcement, requiring the establishment of probable cause to obtain the information needed to establish probable cause.

Conclusion

Pen/trap devices are one of the most commonly used tools of law enforcement. Creating a higher standard for their use will inevitably impact the course of investigations. As discussed above, the implementation of SAF would bring the judiciary into a functional role in the process, shifting their position from that of a rubber stamp to that of a judge. A higher legal threshold would result in fewer pen/trap devices being approved; however, the threshold is not so high as to significantly increase the difficulty of their use. An increase to a SAF standard would simply mean that the pen/trap device, like the 2703(d) order, is an instrument used once an investigation is further along. It would be used when the information is clearly needed and when it is clear that such information would be relevant and material to the investigation. Thus, I propose that the legal threshold should be increased to ensure greater protection of privacy.

Applicant DetailsFirst Name **Madison Isabella**Middle Initial **I**Last Name **Haddad**Citizenship
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State/Territory
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Country
United States

Contact
Phone
Number **7574042063****Applicant Education**BA/BS From **Virginia Polytechnic Institute and State University**Date of BA/
BS **May 2021**JD/LLB From **University of Wyoming College of Law**
<http://www.uwyo.edu/law/index.html>Date of JD/
LLB **May 10, 2024**Class Rank **50%**Does the law
school have a
Law Review/
Journal? **Yes**Law Review/
Journal **No**

Moot Court
Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Professional Organization

Organizations **I have not graduated yet, but I have worked with
Horty Springer and Mattern in Pittsburgh, PA. and
Ruloff, Swain, Haddad, Morecock, Talbert &
Woodward PC. in Virginia Beach VA.**

Recommenders

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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Madison Haddad
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757-404-2063

June 15, 2023

The Honorable Judge Jamar K. Walker
United States District Court
Eastern District of Virginia
600 Granby Street
Norfolk, Virginia 23510

Re: Application for 2024-2025 Clerkship.

Dear Judge Jamar K. Walker,

I am a third-year law student at the University of Wyoming College of Law, and I am writing to apply for the clerkship position for the 2024-2025 term. I am a native of Virginia Beach, Virginia, and I intend to practice in Virginia Beach at the conclusion of my clerkship.

Attached to the application is my resume, my law school transcript and several recommendations. As reflected in my academic transcript, because of hard work and dedication, I have improved substantially every semester culminating in a 3.7 GPA my fourth semester at the University of Wyoming College of Law. I believe that I could make a strong contribution to your chambers as a clerk for the 2024-2025 term, and I am positive this clerkship will give me an invaluable opportunity to gain insight into how courts operate while further improving my legal skills.

In addition to my resume, grade report, and several recommendations, I have also enclosed an excerpt of a persuasive essay that I wrote for Bioethics. Please let me know if you need any additional information. Thank you for considering my application.

Sincerely,

Madison Haddad

MADISON HADDAD

1609 Duke of Windsor Rd. | Virginia Beach, VA. 23454 | 757-404-2063 | mhaddad@srgslaw.com

EDUCATION

UNIVERSITY OF WYOMING, COLLEGE OF LAW Expected Graduation: May 2024
Laramie, Wyoming. Candidate for J.D., GPA: 2.93; improving each semester, culminating in a fourth semester 3.72 GPA and Dean's List.

VIRGINIA TECH May 2021
Blacksburg, Virginia. B.A., International Public Policy. Minor, Spanish.

Activities: Feminist Activism Club
OrphaNetwork Club
Operation Smile Club

EXPERIENCE

OPERATION SMILE: Virginia Beach, VA. *Student Intern*
2016-2017

- Advocated for safe and well-timed surgery on a global scale. This included planning events, overseeing their International Student Leadership Conference, and completing any work that needed to be done in the office.
- Traveled to Thailand, Vietnam, India, and Rome to help with medical missions and to advocate for individuals while also assimilating cultural and communication diversity to effectuate the mission of the organization.

HORTY SPRINGER & MATTERN: Pittsburgh, PA. *Intern*
Summer 2022

- Horthy Springer and Mattern was the first health law firm in the world. The practice is focused on providing education, consultation, and legal services exclusively to health systems, hospitals, hospital medical staffs, and related healthcare organizations nationwide.
- Responsible for drafting articles for the firm's newsletter called Health Law Express, doing case research for the firm's newsletter, and performing research for the partners on any legal questions that would arise.

RULOFF, SWAIN, HADDAD, MORECOCK, TALBERT & WOODWARD PC.: Virginia Beach, VA. *Intern;* Summer 2023

- Ruloff, Swain, Haddad Morecock, Tabbert, & Woodward PC is a full service law firm that provides a wide array of legal services including medical malpractice, personal injury, criminal defense, business and estate assistance, and real estate matters.

- Responsible for attending mediations, depositions, trials, and performing legal research for the firm. I have been able to work for all fields while interning with the firm, but the main focus of this internship has been medical malpractice, personal injury and product liability.

SKILLS AND OTHER LEADERSHIP ACTIVITIES

Languages: Proficient in Spanish

OrphaNetwork: Volunteered in Nicaragua on several occasions. Advocated for nutritional education on a global level. **2012-Present**

American Red Cross: Volunteered with American Red Cross **2016-Present**

Dockside Restaurant: Worked as a food runner and a hostess at a popular seafood restaurant in Virginia Beach. **2016-2017**

UNIVERSITY OF WYOMING

Office of the Registrar, Laramie, Wyoming 82071

Page: 1

Name: Madison I. Haddad

SID: W10151528

SSN: *****5027

Date of Birth: 17-MAR

Level: Law

Date Issued: 08-JUN-2023

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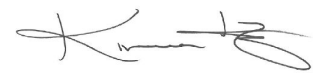
Pre-System Hours: N

Transcript Type: EMAL



Course Level: Law					SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Current Program					Institution Information continued:			
Juris Doctor					LAW 6420	Prof Responsibility	3.00 B+	10.00
Program : JD in Law					LAW 6555	Bioethics	3.00 B-	8.00
College : College of Law					LAW 6565	Civil Pretrial	3.00 B+	10.00
Major : Law					LAW 6720	International Law	3.00 A-	11.00
					LAW 6915	Tpcs: Sports & Entertainment	3.00 A-	11.00
					Ehrs: 17.00 GPA-Hrs: 17.00 QPts: 54.67 GPA: 3.216			
					Good Standing			
INSTITUTION CREDIT:					Spring 2023			
Fall 2021					College of Law			
College of Law					Law			
LAW 6110	Contracts I	3.00 C-	5.00		LAW 6410	Evidence	3.00 A	12.00
LAW 6120	Property I	3.00 C	6.00		LAW 6640	Family Law	3.00 A	12.00
LAW 6130	Torts I	4.00 C-	6.67		LAW 6685	Health Law	3.00 A-	11.00
LAW 6160	Legal Writing I	3.00 C-	5.00		LAW 6755	Legislation	3.00 B	9.00
LAW 6165	Legal Research: S1	1.00 C+	2.33		LAW 6775	International Human Rights	3.00 A	12.00
LAW 6240	Civil Procedure I	3.00 A-	11.00		LAW 6935	Contract Drafting	3.00 A-	11.00
Ehrs: 17.00 GPA-Hrs: 17.00 QPts: 36.00 GPA: 2.118					Ehrs: 18.00 GPA-Hrs: 18.00 QPts: 67.00 GPA: 3.722			
Good Standing					Dean's List			
					Good Standing			
Spring 2022					Fall 2023			
College of Law					IN PROGRESS WORK			
Law					LAW 6330	Trusts & Estates	3.00 IN PROGRESS	
LAW 6140	Criminal Law	3.00 B-	8.00		LAW 6630	Criminal Procedure	3.00 IN PROGRESS	
LAW 6210	Contracts II	2.00 B	6.00		LAW 6915	Tpcs: Race, Gender and Law	3.00 IN PROGRESS	
LAW 6220	Property II	2.00 C	4.00		LAW 6915	Tpcs: Sentencing Law & Policy	2.00 IN PROGRESS	
LAW 6250	Constitutional Law I	3.00 C	6.00		LAW 6915	Tpcs: Alternative Dispute Res	3.00 IN PROGRESS	
LAW 6260	Legal Writing II: S1	2.00 B	6.00		In Progress Credits 14.00			
LAW 6340	Civil Procedure II	2.00 B	6.00		***** TRANSCRIPT TOTALS *****			
Ehrs: 14.00 GPA-Hrs: 14.00 QPts: 36.00 GPA: 2.572					Earned Hrs GPA Hrs Points GPA			
Good Standing					TOTAL INSTITUTION 66.00 66.00 193.67 2.934			
Fall 2022					OVERALL 66.00			
College of Law					***** END OF TRANSCRIPT *****			
Law								
LAW 6350	Constitutional Law II	2.00 C+	4.67					
***** CONTINUED ON NEXT COLUMN *****								

This is an electronic copy of an official transcript.


 Registrar

University of Wyoming
Laramie, WY 82071

Office of the Registrar
(307) 766-5272

Transcript Explanation

If there is an 'I' in the Pre-System Hours field at the top of the transcript, there should also be a transcript produced from an original hard card academic record. Please do not hesitate to call our office with any questions.

Release of Information

Under the Family Educational Rights and Privacy Act of 1974 (PL93-380), a receiving party is not authorized to release any information contained on this transcript to a third party without the written consent of the student.

Credit from other Academic Institutions

Listing of transfer credit appears on transcript copies of the original hard card academic record. Only the name and dates of previously attended schools appear on the computer-generated transcripts. Official transcripts of credit earned at other institutions are not reissued or copied for distribution.

Credit Hours

The unit of credit is the semester hour unless otherwise noted.

Regional Accreditation

The University of Wyoming is regionally accredited by the Higher Learning Commission; Member-North Central Association.

Column Designations

EHRs = Earned hours
GPAHRS = Quality hours (hours used in calculation of GPA)
QPTS = Quality points (points used in calculation of GPA)
GPA = Grade Point Average

Effective Fall 1968

CORR or CO - correspondence study courses
EXAM or XM - credit by examination
XPER or XP - experiential learning

Academic Standing

Student is in good standing unless one of the following appears after a semester:

Probation Student is not making satisfactory academic progress toward a degree

Continued Probation Student's cumulative GPA is less than 2.000 but semester GPA is at or above 2.000

Suspension Enrollment shall not be continued due to unsatisfactory academic progress; not normally eligible to petition for reinstatement until four months have elapsed.

Grading System

On September 1, 2014 the grading system changed. The current system is indicated below. Prior to this date, plus/minus grades were not available to undergraduate, graduate, or pharmacy students.

Grade	Points	
A	4.000	
A-	3.667	
B+	3.333	
B	3.000	
B-	2.667	
C+	2.333	
C	2.000	
C-	1.667	
D+	1.333	
D	1.000	
D-	0.667	College of Law only
F	0.000	Failure
S	0.000	Satisfactory
U	0.000	Unsatisfactory
W	0.000	Withdrawal from individual course or from the university
I	0.000	Incomplete
SA	0.000	Satisfactory Audit (no credit earned)
UA	0.000	Unsatisfactory Audit (no credit earned)
***	0.000	Semester in Progress or grade not yet submitted
(grade)	0.000	Developmental/Academic Renewal
(grade)X	0.000	Repeated course - exclude GPA and hours
(grade)Q		Repeated course exclude hours only - points depend on grade earned
XG	0.000	Exclude from GPA

Grading System - College of Law Effective Fall 2015

Grade	Points	Grade	Points
A	4.000	C	2.000
A-	3.667	C-	1.667
B+	3.333	D+	1.333
B	3.000	D	1.000
B-	2.667	D-	0.667
C+	2.333	F	0.000
			Failure

Grading System - College of Law Effective Fall 1995 through Summer 2015

Grade	Points	Grade	Points
A	4.00	C	2.00
A-	3.67	C-	1.67
B+	3.33	D+	1.33
B	3.00	D	1.00
B-	2.67	D-	0.67
C+	2.33	F	0.00
			Failure

Course Numbering System Effective Spring 1991:

0000 - 0999 Preparatory course (no credit)
1000 - 2999 Primarily for Freshmen and Sophomores
3000 - 4999 Primarily for Juniors and Seniors
5000 - 5999 Primarily for Graduate Students
Only courses numbered 4000 or above are computed into the graduate GPA and allowed for graduate credit.
6000 - 6999 College of Law, Pharmacy, or Medicine courses

The transcript key utilized prior to September 1, 2014 may be viewed at:
http://www.uwyo.edu/registrar/transcripts_enrollment_verification/transcript_key.html

This document cannot be released to a third party without the written consent of the student. This is in accordance with the Family Educational Rights and Privacy Act of 1974. If you have any questions about this document, please contact our office at (307) 766-5272.
ALTERATION OF THIS DOCUMENT MAY BE A CRIMINAL OFFENSE!

June 17, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Madison Haddad for a clerkship position with you. Ms. Haddad worked for us as a summer intern after her first year of law school in 2022. She is very intelligent, a hard worker and has an engaging personality. Ms. Haddad worked on several projects for me. She was always on time and produced a good work product.

Ms. Haddad will have a successful legal career in the future and would make an excellent clerk. I can recommend her without hesitation.

Please let me know if you have any questions.

Sincerely,

Daniel M. Mulholland III
dmulholland@hortyspringer.com

Dan Mulholland - dmulholland@hortyspringer.com

**RULOFF, SWAIN, HADDAD,
MORECOCK, TALBERT & WOODWARD, P.C.**

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ROBERT J. HADDAD *
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ROBERT G. MORECOCK
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*Also admitted in S.C.
+ Also admitted in N.C.

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ROBERT E. RULOFF
STEPHEN C. SWAIN*+
JEFFREY T. TALBERT
LAWRENCE H. WOODWARD, JR.

OF COUNSEL
EDWIN J. RAFAL

June 19, 2023

United States District Court
for the Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510


To Whom it May Concern:

I am writing to recommend Madison Haddad for a law clerkship in the United States District Court. Madison is extremely intelligent, hard-working, personable, and has outstanding people skills. She has the work ethic, analytical skills, research ability, and writing talents to excel at the challenges that a law clerk for a busy U.S. District Court Judge encounters. I have known her for her entire life and her father has been my law partner for the last 30 plus years. She is a confident and outgoing young woman who has the ability to communicate with all types of people, especially in busy and often stressful situations that are encountered during trials by federal law clerks. She grew up in a large family and played team sports her entire high school career, both experiences that have given her the life skills she needs to work with others in a collaborative manner.

I have practiced in the U.S. District Court for almost 4 decades and am fully aware of how competitive the application process for law clerk positions are. I know that the ability to communicate in writing, communicate verbally, the requirement to work long hours, and the frequent need to meet very short deadlines are what is expected and demanded of a judge's law clerk. I have no doubt that if Madison is given the opportunity, she will be a great asset to the Court and will exceed all expectations.

I urge that she be selected as a law clerk in the strongest possible terms.

Very truly yours,


Lawrence H. Woodward, Jr.

LHWjr:tth

UNIVERSITY OF WYOMING

COLLEGE OF LAW

Melissa Alexander, Professor of Law
Dept. 3035 • 1000 E. University Avenue • Laramie, Wyoming 82071
(307) 766-2289 • e-mail: melissa.alexander@uwyo.edu

June 19, 2023

Dear Judge,

I am writing to recommend Madison “Izzy” Haddad’s application for a judicial clerkship in your chambers. Ms. Haddad is a Virginia native, planning to return and practice in the state. I met Ms. Haddad a year and a half ago when she enrolled in Civil Procedure II and came to know her better after she took several other classes with me the following year. Ms. Haddad’s legal work has improved more over the last year than any other student I have had in a decade of teaching full-time. Even as a struggling first year student, Ms. Haddad was a hard worker who regularly attended office hours. She has a passion for medical malpractice, products liability, and personal injury law, and I was lucky to have her perspective in my Bioethics seminar. She was always prepared for class and met paper deadlines early. The real joy came last semester, however, when Ms. Haddad, who is instantly likeable, took Health law and started producing what even this “hard grader” regards as “A” legal work.

While I recognize that it is rare to take a federal judicial clerk who is not (yet) in the top of the class, Ms. Haddad’s grade trajectory is also exceedingly rare. I encourage you to consider taking a chance on Ms. Haddad, who is delightful, has intellectual promise, and could increase diversity. She will work tirelessly to be the best clerk possible.

Ms. Haddad also has a passion for helping others that suggests she will be a community leader in Virginia in the future. So far, she has chosen to invest her extracurricular time in mission trips to Southeast Asia, South Asia, and Central America. She will almost certainly apply this same concern for others to pro bono work locally, likely in the health law field.

Having graduated UVA Law, clerked for a federal judge, and become a partner at Bradley Arant before turning to teaching, I am familiar with the skills needed for a federal clerk, and I have no question that Ms. Haddad has what it takes to be one. She is organized, intelligent, and follows directions well, asking questions when needed and working independently when additional guidance is unnecessary.

Thank you for considering Ms. Haddad’s application. Please do not hesitate to contact me should you have any questions or if I may otherwise be of assistance in evaluating what Ms. Haddad could bring to your chambers.

Very truly yours,

s/Melissa Ballengee Alexander

Carl M. Williams Professor of Law & Ethics
University of Wyoming, College of Law

Madison Haddad

November 27, 2022

Bioethics

A New Legal Duty Requiring Full Disclosure from Physicians

Medical errors are the third leading cause of death in the United States, causing approximately 251,000 deaths annually.¹ Yet only ten percent of those errors are actually reported to hospital reporting systems.² Out of those ten percent of errors reported by physicians, an even smaller percentage are disclosed to the patient.³ This paper argues that physicians be required to disclose all medical errors to the patient and institutional reporting systems, including minimally harmful and/or nonharmful medical errors.

I – Limitations of Informed Consent

Mistakes are an inevitable part of being human; physicians are no exception. In fact, medical mistakes are common, expected, and understandable.⁴ A medical mistake is defined as “a commission or an omission with potentially negative consequences for the patient that would have been judged wrong by skilled and knowledgeable peers at the time it occurred, independent of whether there were any negative consequences.”⁵ When a medical error occurs but does not result in damage or harm to the patient, it is known as a nonharmful medical error or a near miss.⁶ A near miss occurs when a patient is placed in an unsafe condition as a result of the physician’s conduct, but the harm does not reach the patient, either because of mere chance or because a third-party individual intervened.⁷ Often, the physician is the only one aware of a mistake, especially when that mistake did

¹ James G Anderson & Kathleen Abrahamson, *Your Health Care May Kill You: Medical Errors*, 234 STUD HEALTH TECHNOL INFORM. 13,17 (2017).

² Id.

³ Catherine J. Chamberlain, Leonidas G. Koniaris & Albert W. Wu, *Disclosure of “nonharmful” medical errors and other events*, 147 ARCHIVES OF SURGERY 282, 286 (2012).

⁴ Albert W. Wu, Thomas A. Cavanaugh, Stephen J McPhee, Bernard Lo, Guy P Micco, *To tell the truth: ethical and practical issues in disclosing medical mistakes to patients.*, 12 J. GEN. INTERN. MED. 770,775 (1997).

⁵ Id.

⁶ Id.

⁷ Id.

not result in actual harm to the patient.⁸ In order to avoid liability, a physician may label a mistake “harmless” to evade disclosure.⁹ Additionally, what a physician considers a “near miss,” the patient may consider a “harmful error”.¹⁰

The doctrine of informed consent generally requires physicians to disclose the nature of the patient’s treatment, alternatives to any treatment, and the relevant risks, benefits, and uncertainties related to each treatment option.¹¹ The physician is also responsible for assessing the patient’s competence when making an informed decision, absent of coercion.¹² Informed consent is a principal doctrine in medical ethics and medical law. It is essential in allowing patients to actively participate in medical decisions. The informed consent doctrine provides the patient an opportunity to make competent, informed decisions regarding their healthcare.¹³ Informed consent occurs before a patient receives care.¹⁴ Informed consent is accomplished once a patient is informed of all relevant information, and consents to a procedure.¹⁵

The informed consent doctrine is used so religiously by physicians in the United States it is often forgotten it is relatively new, having only been used since the early 1960s.¹⁶ While attitudes surrounding patient autonomy and shared decision making between the physician and patient have shifted since the 1960s, the substantive scope of informed consent has remained the same.¹⁷ This shows that society is recognizing the importance of patient autonomy; however, the legal system has not been altered to represent that view.¹⁸

⁸ Chamberlain, *supra* note 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Jessica De Bord, *Informed Consent*, UW DEPARTMENT OF BIOETHICS & HUMANITIES (2018), <https://depts.washington.edu/bhdept/ethics-medicine/bioethics-topics/detail/67> (last visited Oct 18, 2022).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Nadia N. Sawicki, *Modernized Informed Consent: Expanding the Boundaries of Materiality*, 2016 U. ILL. L. REV. 821 (2016)

¹⁷ *Id.*

¹⁸ *Id.*

In the United States, courts have been reluctant to hold physicians liable for failing to disclose nonharmful errors or near misses because the patient did not suffer actual damages as a result of the physician's failure to disclose.¹⁹ The informed consent doctrine determines liability under the theory of negligence and establishes its foundation in the tort of battery.²⁰ This requires the patient to satisfy four elements in order to be successful in their claim. These four elements are 1) the existence of a legal duty the physician owed to the patient; 2) that the physician breached that duty; 3) the patient suffered an injury; and 4) that the patient suffered the injury as a result of the physician's breach.²¹ When a physician breaches the duty to disclose required information, and the patient is unharmed by the lack of disclosure, the physician would likely evade legal liability due to lack of injury to the patient.²² Consequently, determining legal liability and enacting legal repercussions for a physician's failure to disclose is difficult. This strictly limits the applicability of the informed consent doctrine because often, a physician's error, even if not resulting in harm, is material to a patient's healthcare decisions and therefore should be disclosed.²³

II – Patient Autonomy Requires Full Disclosure

Informed consent is an ethical and legal obligation of physicians in the United States and is embedded within the principle of autonomy.²⁴ Autonomy, as it applies to healthcare, is a principle which allows competent adults to make their own informed decisions regarding their medical care and requires physicians to respect individual autonomy.²⁵ Truthful and open communication between

¹⁹ Travis Peeler, *Doctor's Duty to Disclose*, LEGALMATCH LAW LIBRARY (2022), <https://www.legalmatch.com/law-library/article/doctors-duty-to-disclose.html> (last visited Nov 4, 2022).

²⁰ Sarah Haston, *Impaired Physicians and the Scope of Informed Consent: Balancing Patient Safety with Physician Privacy*, 41 FLA. ST. U. L. REV. 1128 (2014).

²¹ Negligence, LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/wex/negligence> (last visited Nov 4, 2022).

²² Laurel R. Hanson, *Informed Consent and the Scope of a Physician's Duty of Disclosure*, 77 N. D. L. REV. 71 (2001).

²³ Chamberlain, *supra* note 3.

²⁴ Warren T. Jahn, *The 4 basic ethical principles that apply to forensic activities are respect for autonomy, beneficence, nonmaleficence, and justice*, 10 JOURNAL OF CHIROPRACTIC MEDICINE 225, 226 (2011).

²⁵ *Id.*

the physician and the patient is essential for the trust element of the doctor/patient relationship.²⁶ The implementation of a legal duty requiring physicians to disclose all medical errors, including all nonharmful errors and near misses, is necessary to achieve patient autonomy.

In order for a physician to fulfill their duty of respecting patient autonomy, the physician has three primary responsibilities.²⁷ First, the physician is responsible for making sure the patient understands all essential aspects of their medical treatment options and that the patient is aware of all alternative treatment options.²⁸ Second, the physician is responsible for creating an environment where the patient can make an informed and intentional decision based on the patient's understanding of the treatment.²⁹ Third, the physician is responsible for ensuring that the patient is making medical choices, absent of controlling influences or coercion.³⁰ To achieve full patient autonomy, a legal duty for physicians to disclose all medical errors to patients needs to be implemented.³¹

III – Full Disclosure is an Essential Element of the Doctor/Patient Relationship

The doctor/patient relationship is unique in that it requires patients to trust physicians with their wellbeing. Therefore, courts across the United States have held that there is a fiduciary relationship between a physician and a patient.³² In 1946, an Arkansas Court stated there is a fiduciary relationship between physician and patient and that “the relation of a physician to his patient is one of the highest trusts and the physician must act with the utmost good faith.”³³ In 1993, a Virginia court held “there is a fiduciary relationship between physician and patient, and that

²⁶ Chapter 2: Opinions on Consent, Communication & Decision Making, AMA PRINCIPLES OF MEDICAL ETHICS (2018)

²⁷ Lois Snyder Sulmasy & Thomas A. Bledsoe, *American College of Physicians Ethics Manual*, 170, ANNALS OF INTERNAL MEDICINE (2019).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Chamberlain, *supra* note 3.

³² Maxwell J. Mehlman, *Why Physicians are Fiduciaries for Their Patients*, 12 IND. L. REV 1 (2015)

³³ *Hummel v. State*, 196 S.W.2d 594, 595 (Ark. 1946).

appears to be the general rule.”³⁴ In 2006, a Georgia court held that “ordinarily, physicians owe a fiduciary duty to their patients with respect to the care given.”³⁵ Due to this duty, patients have a right to know when an error occurs and an explanation of the error.³⁶

Patients have certain expectations of physicians and what should occur in the event of medical error: acknowledgement, explanation, regret, and if necessary, compensation.³⁷ The perception or suspicion that an error occurred from the point of view of the patient, even without physiological or physical consequences, may erode patient trust, create patient anxiety, and lead to negative effects in the doctor/patient relationship.³⁸ Patients and attorneys are more likely to cite failure to communicate and loss of trust, rather than substandard care, as the most common cause of medical malpractice lawsuits.³⁹ Patients are normally receptive and understanding when a physician comes forward and apologizes.⁴⁰ However, when a physician conceals an error, and the patient later finds out, it can be detrimental to the doctor/patient relationship.⁴¹

III – Legal Standard for Holding Physicians Liable

There are standards in place, implemented by organizations across the United States, for physician disclosure. The American Medical Association’s Journal of Ethics states:

[W]hen patient harm has been caused by an error, physicians should offer a general explanation regarding the nature of the error and the measures being taken to prevent similar occurrences in the future. Such communication is fundamental to the trust that underlies the patient-physician relationship and may help reduce the risk of liability.

AMA Council on Ethical and Judicial Affairs, Opinion 8.082 – Withholding Information from Patients, AMA JOURNAL OF ETHICS (2011). Similarly, Opinion 8.12 of the American Medical

³⁴ *Stevenson v. Johnson*, 32 Va. Cir. 157, 159 (Va. Cir. Ct.1993).

³⁵ *Cox v. Athens Reg'l Med. Ctr., Inc.*, 631 S.E.2d 792, 798 (Ga. Ct. App. 2006).

³⁶ Geoffrey H. Gordon, *Disclosing error to a patient: Physician-to-patient communication*, 7 AMA JOURNAL OF ETHICS (2005).

³⁷ *Id.*

³⁸ Chamberlain, *supra* note 3.

³⁹ Gordon, *supra* note 36.

⁴⁰ *Id.*

⁴¹ Chamberlain, *supra* note 3.

Association's Journal of Ethics states that disclosure is a fundamental ethical requirement and "that a physician should at all times deal honestly and openly with patients. Patients have a right to know their past and present medical status and to be free of any mistaken beliefs concerning their conditions", and the physician has no right to withhold that information.⁴² There are clear ethical requirements for physicians to disclose all medical errors to patients, however, there are no clear legal standards or requirements in place to hold physicians liable for failing to disclose all medical errors to the patient.⁴³

There have been a number of suggested remedies for when a physician fails to disclose a medical error. One disclosure policy that was implemented in Lexington, Kentucky by the Veterans Affairs (VA) Medical Center requires physicians to pay a moderate liability payment when a nonharmful medical error or near miss occurs.⁴⁴ The disclosure policy requires physicians to report any unanticipated outcomes, either as a result of an accident or medical negligence, to the patient.⁴⁵ The purpose of this policy is to determine when, where, how, and why medical errors occur, to analyze the institution's error reporting system, and to eventually ascertain what is needed in order to avoid medical errors in the future.⁴⁶ The policy was implemented to ensure patients are informed and their autonomy is being respected.⁴⁷ This policy incorporated an apology law which protects physicians from the patient using the physician's apologetic statement as evidence against the physician in a court of law.⁴⁸ This allows the physician to report errors, without fear of a medical malpractice lawsuit.⁴⁹

⁴² AMA Council on Ethical and Judicial Affairs, Opinion 8.082 – Withholding Information from Patients, AMA JOURNAL OF ETHICS (2011)

⁴³ Chamberlain, *supra* note 3.

⁴⁴ Zane Robinson Wolf & Ronda G. Hughes, *Error Reporting and Disclosure – Patient Safety and Quality; Chapter 35*, NATIONAL LIBRARY OF MEDICINE (2008)

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

The legal change suggested in the paper is similar to one enacted by the VA Medical Center. The key difference is that it would be implemented by federal statute so that every physician in the United States would be required to follow the same set of standards. The current disclosure standard in place is too complicated with too many discrepancies in what the physician is required to disclose, with no clear consensus on what constitutes a material risk within the medical community.⁵⁰ There are no specific disclosure requirements all physicians in the United States are required to follow, and therefore there is no consistent way to obtain informed consent.⁵¹ Having a statute that is implemented by federal law will make disclosure laws more consistent and expansive, and this in turn will improve patient autonomy and their ability to make informed medical decisions.

The policy suggested in this paper would also require the medical institution hiring physician's work to pay a moderate fine when a nonharmful error or near miss occurs. This incentivizes physicians to come forward with nonharmful medical errors and near misses without fear of financial loss. This would also incentivize medical institutions to minimize harms that may occur while the patient receives care. This is a better option for medical institutions as opposed to litigating medical malpractice suits. The policy being suggested is similar to VA Medical Center's system, except the medical institution's fine would go into a federal fund for indigent patients, allocated by government officials and given to patients in need. This policy would require physicians to disclose all mistakes to the patient, regardless of whether the mistake was harmful or nonharmful, and would look similar to the report used by the VA Medical Center. The report would be given to the patient and would include reporting details of the incident, a statement expressing institutional regret, and information that will identify institutional corrective actions.⁵² Comparable to VA Medical Center's policy, this policy would protect physicians with an apology law, preventing

⁵⁰ Alan W. Patrin, Ethics and Informed Consent, CAMPBELL-WALSH-WEIN UROLOGY INFORMED CONSENT INFORMED (2021).

⁵¹ Nichole Bazemore, *Not All Doctors Get Informed Consent - Here's Why It's Hurting Patients*, FORBES (2016).

⁵² Robinson, *supra* note 44.

patient's use of the physician's apologetic statements as evidence in court. The policy enacted by the VA Medical Center has had positive results and is more in line with the goal of the doctrine of informed consent.⁵³ The primary goal of this policy is not to punish physicians, but instead to ensure the patient is informed of all essential aspects of their care. With this standard in place, the doctor/patient relationship would be solidified, and patients would gain confidence and trust in that they are being informed of every element of their medical care.

IV – The Scope of Disclosure

Every person has an opinion on what constitutes an error. This can create issues in determining the scope of disclosure. There are various standards used in different jurisdictions across the United States, but the three main standards are 1) a physician-based standard 2) a patient-based standard; or 3) a hybrid standard.⁵⁴ Under the physician-based standard, the court asks what information a reasonable physician would disclose to the patient.⁵⁵ Using the patient-based standard, the court asks what information a reasonable patient would consider material in making a decision about their medical treatment.⁵⁶ Jurisdictions using the hybrid standard have either not currently articulated a definitive standard, or they use a combination of the patient-based and the physician-based standards.⁵⁷ The United States as a whole has been inconsistent regarding a required standard.⁵⁸ This paper argues that the standards be expanded and applied under a full disclosure standard. While both the physician-based and the patient-based standards are used by courts throughout the United States, the patient-based standard is more in line with the goals of informed consent and the principle of patient autonomy.⁵⁹

⁵³ Id.

⁵⁴ Hanson, *supra* note 22.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Chamberlain, *supra* note 3.

When the court uses the physician-based standard, the court is only asking what information a reasonable physician would disclose to the patient about the treatment, and disregards what the patient thinks should be disclosed.⁶⁰ When it comes to disclosing a nonharmful medical error or a near miss, using the physician-based standard is difficult because a reasonable physician may not believe nonharmful errors or near misses are necessary to disclose to the patient, but the patient may think that information is material to their care.⁶¹ Additionally, the physician-based standard gives the physician too much control over the situation, and the patient's opinion is not being considered.⁶² When defining error and harm, one needs to consider the patient's perspective, which may differ from that of the physician.⁶³ On the contrary, using the patient-based standard can be difficult because when asking what a reasonable patient would require to be disclosed, the answers may vary immensely.⁶⁴ Some patients may want to be told everything, while other patients may not want to know about nonharmful errors or near misses.⁶⁵ This can create issues; however, it is better for a patient to know too much about their care than not enough.⁶⁶

In order for patients to make health care decisions and work in partnership with the physician, the patient must be well informed.⁶⁷ This calls for a patient-based disclosure standard. The scope of disclosure should be expanded to include all information patients and, when appropriate, their family, caregivers or surrogates would consider material to understanding the patient's situation, possible treatments or alternatives, probable outcomes, and choices for future care.

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⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ Wendy Levinson, Audiey Kao, Alma Kuby & Ronald A. Thisted, Not All Patients Want to Participate in Decision Making, 20 WILEY ONLINE LIBRARY (2005)

⁶⁵ Id.

⁶⁶ Chamberlain, *supra* note 3.

⁶⁷ Sulmasy, *supra* note 27.

⁶⁸ Id.

V - Conclusion

The number of preventable adverse medical events has become a public health issue. New standards need to be implemented to address this healthcare concern.⁶⁹ To accomplish this, and to respect patient autonomy and the informed consent doctrine, is to implement a full disclosure standard.⁷⁰ Immediate disclosure of all medical errors is the best approach in order to achieve full patient autonomy. Full disclosure of minimally harmful, nonharmful, or near miss errors strengthens the doctor/patient relationship, creates an environment of open dialogue between the physician and patient, and facilitates patient participation in medical decision making.⁷¹ It is unethical to mislead a patient by concealing essential elements of their care, even if those elements do not result in harm.

In order for a patient to make an informed and autonomous decision about their medical care is to require a full disclosure standard from physicians. Implementing a duty of full disclosure for physicians, would hold doctors to a higher standard, improve the quality of healthcare patients receive, uphold patient autonomy, and save lives. Therefore, this standard should be implemented as it is the most ethical thing to do.

⁶⁹ Olivier Guillod, *Medical Error Disclosure and Patient Safety: Legal Aspects*, 2 JOURNAL OF PUBLIC HEALTH RESEARCH (2013).

⁷⁰ Id.

⁷¹ Chamberlain, *supra* note 3.

Applicant Details

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Contact Phone Number	267-721-7346

Applicant Education

BA/BS From	Temple University
Date of BA/BS	May 2018
JD/LLB From	University of Pennsylvania Carey Law School
	https://www.law.upenn.edu/careers/
Date of JD/LLB	May 13, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	University of Pennsylvania Journal of Constitutional Law
Moot Court Experience	Yes
Moot Court Name(s)	2022-2023 NBLSA Thurgood Marshall Moot Court Competition
	2023 Edwin R. Keedy Cup Moot Court Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **Yes**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations **Just the Beginning Organization**

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Yaried A. Hailu

6841 Walnut Park Dr. Upper Darby, PA | 267-721-7346 | yariedh@pennlaw.upenn.edu

June 12, 2023

The Honorable Jamar Walker
U.S. District Court for the Eastern District of Virginia
600 Granby St.
Norfolk, VA 23510

Dear Judge Jackson,

I am writing to request your consideration of my application for a clerkship for the 2024-2025 term. I am a rising third-year law student at the University of Pennsylvania Carey Law School. My interest in clerking for you stems from our aligned commitment to serving the public. Your experiences as a federal prosecutor and your extensive community service work have fueled my excitement about the opportunity to learn from your leadership.

With every barrier I break, I try to ensure my actions pave the way for others who come after me. As a leader, each achievement of mine comes with a sense of responsibility to support others following a similar path. It is important for me to mentor young students from a similar low-income and underrepresented community and support them as they navigate the challenges I once faced. As the first person in my family to attend college, I encountered many hurdles navigating the application process for schools and scholarships. Thus, this led me to volunteer as a mentor in the Minds Matter program, where I worked with a high school student who needed guidance applying to college. I used this opportunity to share the challenges I faced during my transition to college and the various support systems available to overcome those obstacles. Additionally, in law school, I have participated as a mentor in the Penn Law Outreach Program to support diverse, first-generation college students in their goal of attending law school.

I have an appreciation and aptitude for clear, concise, and accurate writing. Prior to law school, I was a paralegal at Community Legal Services of Philadelphia. In my role, I analyzed the evidence and constructed briefs that proved the severity of my client's disability and secured them life-changing economic relief. During my 1L year, I interned for Judge David Strawbridge, where I continued to develop strong legal research and writing skills. I was tasked with drafting a memorandum opinion on a Title II Social Security Disability Appeal. I conducted significant legal research and analysis on the administrative rules of Social Security, precedential cases, and the appeal at hand before deciding to affirm the Administrative Law Judge's decision.

Additionally, in my 2L year, I excelled in Appellate Advocacy, an advanced legal writing and oral advocacy course. I also continued to gain hands-on legal experience by working at the ACLU of Maryland. While at the ACLU of Maryland, I conducted extensive legal research and developed detailed memorandums on various civil rights issues affecting marginalized communities.

I have enclosed my resume, transcript, and writing sample. Letters of recommendation from Judge Anthony Scirica (ascirica@ca3.uscourts.gov), Professor Seth Kreimer (skreimer@law.upenn.edu), Deborah Jeon (jeon@aclu-md.org), and Professor Robert Zauzmer (bob.zauzmer@usdoj.gov). I am confident that my experiences make me a strong candidate for this position. I look forward to meeting with you and discussing my qualifications in more detail. Thank you for your consideration.

Sincerely,
Yaried Hailu

Yaried A. Hailu

6841 Walnut Park Dr. Upper Darby, PA | 267-721-7346 | yariedh@pennlaw.upenn.edu

Education

University of Pennsylvania Carey Law School

Philadelphia, PA

J.D. Candidate

Expected: May 2024

Honors: *Toll Public Interest Scholar* - Full three-year scholarship awarded based on demonstrated commitment to public service, strong academic record, and potential for leadership in the legal community
Executive Editor – Vol. 26 *University of Pennsylvania Journal of Constitutional Law*

Thurgood Marshall Moot Court Team & Keedy Cup Moot Court Competition

Activities: Black Law Students Association – Treasurer, Penn Law Immigrant Rights Project – Community Partner Director

Temple University

Philadelphia, PA

Bachelor of Arts, Political Science

Graduated: May 2018

Honors: *Dean's List:* Fall 2015, Spring 2016, Fall 2016, Fall 2017

Work Experience

Department of Justice – Tax Division, Criminal Enforcement Section

Washington, DC

Legal Intern (SLIP)

May 2023 – Present

- Conducting legal research on 18 U.S.C. § 1344 to support a bank fraud charge against an individual who has not paid their taxes for nearly two decades while operating a foreign business

ACLU of Maryland

Baltimore, MD

Law Clerk

September 2022 – December 2022

- Assisted in drafting a memo explaining why Maryland should implement a state Voting Rights Act
- Conducted research and drafted a memo on the current federal and Maryland case law regarding the legality of body cavity searches when police officers detain civilians

U.S. District Courts, Eastern District of Pennsylvania

Philadelphia, PA

Judicial Intern to the Honorable Judge Strawbridge

May 2022 – August 2022

- Developed a memorandum opinion affirming an Administrative Law Judge's (ALJ) opinion regarding a Title II Social Security claim
- Drafted internal memorandums for the Judge in preparation for settlement conferences

Community Legal Services of Philadelphia

Philadelphia, PA

Paralegal

September 2019 – August 2021

- Drafted multiple briefs to the ALJ demonstrating my clients' eligibility for SSI disability benefits and to the Appeals Council to advocate for a decision to be remanded
- Advocated for my clients during meetings with the Social Security Administration's Field Office representatives when non-disability issues occurred

City of Philadelphia Office of Homeless Services

Philadelphia, PA

AmeriCorps VISTA

August 2018 – August 2019

- Developed a training for providers by creating a PowerPoint presentation with concise information on the use of the Serve VolunteerMatch platform
- Conducted ten trainings presenting in both large group settings and individualized meetings

Volunteer Experience

Campaign for Working Families, Inc.

Philadelphia, PA

Volunteer Tax Preparer – VITA Program

December 2019 – July 2020

- Prepared tax returns for families and individuals making less than \$55,000

Interests

Basketball, Philadelphia Eagles, Film/TV buff, and cooking

Record of: Yariel A Hailu
Penn ID: 31109929
Date of Birth: 26-FEB
Date Issued: 03-JUN-2023

The University of Pennsylvania

U N O F F I C I A L

Page: 1

Level:Law

Primary Program

Program: Juris Doctor
Division : Law
Major : Law

SUBJ NO.	COURSE TITLE	SH GRD	R	SUBJ NO.	COURSE TITLE	SH GRD	R
INSTITUTION CREDIT:				Institution Information continued:			
Fall 2021				LAW 6010	Administrative Law (Wiener)	3.00 B+	
Law				LAW 6070	Antitrust (Hovenkamp)	3.00 B	
LAW 500	Civil Procedure (Fisch) - Sec 2	4.00 B+		LAW 6120	Appellate Advocacy (Zauzmer)	3.00 A-	
LAW 502	Contracts (Ruskola) - Sec 2B	4.00 B		LAW 6740	Constitutional Litigation (Kreimer)	4.00 A-	
LAW 504	Torts (Baker) - Sec 2B	4.00 B		LAW 8280	Journal of Constitutional Law - Associate Editor	1.00 CR	I
LAW 510	Legal Practice Skills (Lindell)	4.00 CR		Ehrs: 14.00			
LAW 512	Legal Practice Skills Cohort (Cahill)	0.00 CR		Spring 2023			
Ehrs: 16.00				Law			
Spring 2022				LAW 5990	Policy Lab: AI and Implicit Bias (de Silva de Alwis)	2.00 A	
Law				LAW 6310	Evidence (Rudovsky)	4.00 B+	
LAW 501	Constitutional Law (Berman) - Sec 2	4.00 B		LAW 7430	Complex Litigation (Scirica/Duncan)	3.00 B	
LAW 503	Criminal Law (Mayson) - Sec 2	4.00 B		LAW 8130	Appellate Advocacy Preliminary Competiton (Gowen)	1.00 CR	
LAW 510	Legal Practice Skills (Lindell)	2.00 CR		LAW 8280	Journal of Constitutional Law - Associate Editor	0.00 CR	I
LAW 512	Legal Practice Skills Cohort (Cahill)	0.00 CR		LAW 9790	Conviction Integrity (Hollway/Bluestine)	3.00 A-	
LAW 583	Judicial Decision-Making (Scirica)	3.00 A		Ehrs: 13.00			
LAW 660	International Law (Burke-White)	3.00 B+		***** TRANSCRIPT TOTALS *****			
Ehrs: 16.00				Earned Hrs			
Fall 2022				TOTAL INSTITUTION 59.00			
Law				TOTAL TRANSFER 0.00			
***** CONTINUED ON NEXT COLUMN *****				OVERALL 59.00			
				***** Comments *****			
				Senior Writing Requirement - fulfilled through Conviction Integrity (Hollway/Bluestine)			
				***** END OF TRANSCRIPT *****			

ROBERT A. ZAUZMER
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June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Yaried Hailu

Dear Judge Walker:

I am pleased to recommend Yaried Hailu for a judicial clerkship.

I am an Assistant United States Attorney in Philadelphia. I have served as a federal prosecutor for 33 years, and have served during the past 25 years as the chief appellate attorney for the office. In addition, I served a one-year detail in 2016 as the Pardon Attorney in the Department of Justice in Washington, DC, overseeing the completion of President Obama's clemency initiative.

I also teach a fall seminar on appellate advocacy at the University of Pennsylvania Law School. In that capacity, I met Yaried, who was one of my students in the seminar during the fall of 2022. Yaried did excellent work during the course.

The course at the law school presented oral and written assignments principally related to three cases, two civil and one criminal. One matter involved a motion to certify for interlocutory appeal a district court's order denying summary judgment in a civil rights matter. Another was a government appeal of a district court ruling granting the suppression of evidence in a criminal prosecution, in which the students fully briefed and argued the case in a moot court setting. The third case presented a complex question of habeas jurisdiction, centered on whether a defendant's latest filing was properly dismissed as a successive motion instead of being treated as a motion for reconsideration of an earlier ruling. This matter was an actual appeal pending before the United States Court of Appeals for the Third Circuit, and I assigned the students, in advance of the argument before the Court of Appeals, to prepare a bench memo identifying the key issues and contentions in the appeal, and suggesting the appropriate outcome.

Yaried's work revealed that he is an excellent writer. On multiple assignments, doing careful line edits, I made few notations on his work, and praised him for the clarity and organization of his presentations. For instance, after reviewing his lengthy statement of facts in the appellate brief he wrote regarding the suppression issue, I wrote to him, "As you will see on the attached draft, I wrote very few corrections or comments. The draft was very well-written, and told the story in a very clear and orderly way." Later, when reviewing the argument section of that brief, I wrote, "The brief was well-written and well-argued. As you will see on the enclosed draft, I wrote just a handful of comments and corrections as I read along."

I am not surprised that Yaried has done well in his other work at the law school, including his service as an editor of the school's Journal of Constitutional Law.

Given my observations, I believe that Yaried will be an able judicial clerk, and I am pleased to offer my recommendation. Please let me know if I may be of further assistance in the consideration of his application.

Respectfully yours,

/s Robert A. Zauzmer
ROBERT A. ZAUZMER

Robert Zauzmer - bob.zauzmer@usdoj.gov

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Yaried Hailu

Dear Judge Walker:

Yaried Hailu, who was admitted to Penn Law as a Public Interest Scholar, will serve in the coming year as Executive Editor of our Journal of Constitutional Law. Mr. Hailu has asked me to write in support of his application for a clerkship with your chambers. I do so with pleasure.

Mr. Hailu is a young man of remarkable determination. His parents came to the United States from Ethiopia. Because of the challenges of the United States immigration system, when Mr. Hailu was 9 years old, his mother was forced to seek asylum in Canada. Mr. Hailu spent six years in Canada with his mother before ultimately returning with her to Philadelphia. Upon graduation from high school Mr. Hailu enrolled as a commuter at Temple University.

While he worked his way through college, Mr. Hailu established a peer mentoring program for first generation college students. Given the disruptive role that the law had played in his life, he resolved to become an attorney. He obtained certification as a tax counselor in the Volunteer Income Tax Assistance program, and he began to cold call practicing attorneys regarding the best way to prepare for law school. The advice he received was that he should work in government and legal fields before becoming a law student.

Mr. Hailu began his preparation through the Americorps VISTA program, serving with the City of Philadelphia's Office of Homeless Services. He spent the next two years working as a paralegal with Community Legal Service in Philadelphia. In addition to counseling clients, he persuaded his supervisors to allow him to draft briefs for clients in SSI disability appeals, where his advocacy succeeded regularly. Mr. Hailu arrived at Penn Law with a strong commitment to service and rich experience in the work of attorneys.

At Penn Law, Mr. Hailu continued to manifest his commitment to service. In his first year, he took leadership roles in the Black Law Students Association and the Penn Law Immigrant Rights Project. I first encountered Mr. Hailu in the fall of 2022 as a student in my small upper level class in Constitutional Litigation. That course, which is often taken by students on their way to federal clerkships, requires students to wrestle with an extensive array of full text cases involving some of the most challenging areas of federal jurisdictional and substantive constitutional analysis. It ranges from the arcana of Section 1983 and Bivens actions through the Eleventh Amendment to issues of abstention and interjurisdictional preclusion. Although he was only a second year student, and was working 17 hours a week on a part time engagement with the ACLU of Maryland, Mr. Hailu was quietly but fiercely resolved to master the area, which he views as important to his professional path.

Mr. Hailu succeeded. In class discussion, he demonstrated strong capacities to analyze both complex issues of law and of facts. On his blind graded exam, Mr. Hailu again manifested the abilities both to discern the interlocking issues at stake and to address them effectively. On the basis of his performance in my course, I believe that Mr. Hailu has the makings of a fine law clerk.

Mr. Hailu is destined for a distinguished career. I encourage you to meet him and to take advantage of his capabilities.

Sincerely,

Seth F. Kreimer
Kenneth W. Gemmill Professor of Law
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June 5, 2023

The Honorable Jia Cobb
United States District Court

Dear Judge Cobb:

I write to recommend to you an exceptional judicial clerkship applicant, Yaried Hailu, who worked last fall as a law clerk at the American Civil Liberties Union of Maryland, where I had the pleasure of getting to know him and to supervise his work. Yaried is keenly intelligent, resourceful, personable, and an excellent writer, who is able to work efficiently and independently. Moreover, as a first-generation college graduate and law student, Yaried is deeply committed to bettering society through the law, particularly for those who have been left out of America's promises historically. This commitment is reflected in Yaried's service prior to law school in AmeriCorps/VISTA, work with Community Legal Services in Philadelphia, and his award by the University of Pennsylvania Law School of a prestigious Toll Public Interest Scholarship.

Yaried's responsibilities at the ACLU included legal research and writing, investigation of civil rights complaints, legislative drafting and analysis, and development of cases for litigation. In all of these areas, his work was outstanding. But Yaried is much more than just capable and smart. We valued his many other qualities: He is kind, easy to work with, unpretentious, and well rounded, with a sense of humor – in addition to being extremely dedicated and hard working. Yaried was enthusiastic about assignments large and small, jumping in to each assignment without complaint, all while juggling ACLU work with his academic courses and extracurricular activities at school.

Yaried's work with us covered several areas of civil rights law, and a variety of tasks – but with a focus on democracy and voting rights. One daunting project Yaried assisted with was our ambitious campaign to enact a Maryland State Voting Rights Act in the wake of court decisions chipping away at protections for minority voting rights under the federal Voting Rights Act of 1965. Although pursuit of this legislation is largely a project of the ACLU's Public Policy team, during the period Yaried worked with us, that team had no lawyers on staff, and so responsibility for launching this important project fell to the Legal Department. This entailed adapting complex legislation enacted in New York to fit our needs in Maryland, and creating explanatory legal materials – including a comprehensive position paper – to support non-lawyer advocates and legislators in pursuing enactment of this innovative civil rights law. It was a challenging undertaking even for the two experienced lawyers working with Yaried; but without hesitation, he dove right in to the deep end with us and started paddling. By the end of Yaried's internship, we had complete drafts of all the needed materials ready to turn over to our policy colleagues, and early in 2023 the Maryland Voting Rights Act was introduced in the Maryland General Assembly amid much fanfare. See A. Alexander, "Some Democratic-Led States Seek to Bolster Voter Protections," Associated Press, February 25, 2023, <https://apnews.com/article/voting-rights-michigan-state-government-maryland-new-jersey-connecticut-45232bc1b2b64fd822b313e11b1ae3ec>.

Another of Yaried's assignments concerned ACLU efforts to support Black residents in the small town of Federalsburg, on Maryland's rural Eastern Shore, where throughout all history, government office has been the exclusive domain of white people. Literally, no Black person in the town's 200-year history has been elected to any public office there, notwithstanding a Black population that has grown over time to nearly 50 percent. One key reason for this is the town's longstanding retention of a racially dilutive at-large election system. When Yaried started at the ACLU, we had recently sent a letter raising legal concerns about the election system with Town officials, offering to collaborate with them in moving toward a fair system, but suggesting a willingness to pursue legal action if necessary. In response, the Town scheduled a public hearing to hear from residents about the matter. One challenge we confronted was that a problem like this can feed upon itself, in that the norm of Black oppression and silence makes it especially difficult for people to speak up. Thus, preparation for this hearing required exceptional sensitivity and understanding, a job Yaried – with his gentle kindness and knack for people – helped facilitate. Ultimately, the process culminated in an extraordinary public hearing, in which Black residents, ministers, civil rights supporters and ACLU lawyers filled the Council chambers to capacity to call on the all-white Council to change their election system. One after another, the residents who had begun shyly confiding their concerns to us months before, stood up, courageously taking to the podium to share their compelling personal stories of discrimination and calling on the Town to commit to immediate change. When the Town still resisted pleas for reform notwithstanding this powerful presentation, the same residents – emboldened and unified by their show of strength at the hearing – joined together to file a federal court legal challenge, seeking to make history in their small corner of the world. It truly has been one of the most inspirational examples of a community rising up to reach for positive change that I have seen in many years doing this work on the Eastern Shore, and I credit Yaried with helping to fan the flame to make it happen.

Yaried also spent significant time at the ACLU preparing a legal memorandum analyzing legal standards in Maryland and the Fourth Circuit governing intrusive bodily searches for a case we are investigating. This project came about after we received a series of complaints about dehumanizing strip searches conducted in public settings by personnel at a Southern Maryland sheriff's office. Yaried was charged with conducting legal research and preparing a memo for staff to use in deciding whether to take on the case. He did so quickly and thoroughly, identifying and analyzing key cases relevant to the questions raised, and based on Yaried's research the case is now moving forward in the litigation process.

Qualities that make Yaried such a pleasure to work with are his quiet passion for civil rights and social justice, his thoughtful empathy for people from all walks of life, and the spirit he exudes of being up to any task. Through these attributes, combined with his lens as a proud Black man committed to service in the public interest, Yaried Hailu will bring enormous contributions as a judicial law clerk, and he will no doubt be a credit to the bar. I recommend him to you most highly.

Deborah Jeon - jeon@aclu-md.org - 410.889.8555

Please do not hesitate to call me should you need more information.

Sincerely,

Deborah A. Jeon
Legal Director

Deborah Jeon - jeon@aclu-md.org - 410.889.8555

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Yaried Hailu

Dear Judge Walker:

I am pleased to write a letter of recommendation on behalf of Yaried A. Hailu, a student at the University of Pennsylvania Carey Law School who has applied for a clerkship in your chambers. Yaried is on his way to compiling a very good record at Penn Law School. He was selected as Associate Editor of Vol. 25 University of Pennsylvania Journal of Constitutional Law and Executive Editor of Vol. 26 University of Pennsylvania Journal of Constitution Law.

At Penn Carey Law, Yaried is a Toll Public Interest Scholar – a full three-year scholarship awarded on demonstrated commitment to public service, a strong academic record and leadership potential in the legal community. His work experience with the ACLU of Maryland, Community Legal Services of Philadelphia and the City of Philadelphia office of Homeless Services demonstrates his commitment. Last summer, Yaried was a Judicial Intern to Magistrate Judge David Strawbridge.

I know Yaried well having taught or co-taught him in two courses at Penn Law School: Judicial Decisionmaking in his first year and Complex Litigation this Spring. In both classes Yaried was well prepared. In both classes, he gave thoughtful responses.

In the 1L course on Judicial Decisionmaking, Yaried wrote an excellent examination demonstrating his understanding of the legal and policy implications of the course material. His examination was superbly written – clear, well-structured, and thoughtful. I gave him the grade of A.

In the current course on Complex Litigation, we delve into the world of complex litigation – joinder, MDL, class actions, mass aggregation and bankruptcy. In this class, Yaried is attentive and well prepared.

Yaried is a wonderful young man, intelligent, perceptive, mature, self-directed, and hard working. He has an engaging personality. Yaried has been a frequent visitor in office hours, and I have enjoyed getting to know him. Yaried is positive and optimistic. He is liked and admired by all who know him and would fit well in chambers.

I believe Yaried will be a very good law clerk and am pleased to recommend him.

Thank you for your consideration.

Sincerely,

Anthony J. Scirica
Tel: 215-597-2399

Anthony Scirica - ascirica@law.upenn.edu - 215-597-2399

I drafted the attached writing sample as an assignment in my Appellate Advocacy class. This is an advanced legal writing and oral advocacy course. It required drafting an appellate brief (on behalf of the government (appellant) or the defendant (appellee)) in *United States v. Wolfe*.

The factual background of the case is as follows. A shooting occurred outside the home of appellee Michael Wolfe. Wolfe was struck in his hand and entered his home, bleeding profusely. Two officers immediately arrived at his home and drove him to the hospital. A sergeant arrived at the scene while Wolfe was assisted to the police vehicle. After Wolfe and his family left, the sergeant entered the home. He followed a blood trail up the stairs. The blood trail stopped atop the stairs, but the sergeant continued to Wolfe's bedroom. There he discovered drugs on Wolfe's bed. He then stepped outside of the room and requested a search warrant. Wolfe was later arrested and admitted to being a drug dealer and the owner of the drugs. The District Court granted the appellee's motion to suppress the drugs and gun recovered in his bedroom and his statements to officers. The Court determined that the exigent circumstances had ended when the sergeant entered the home. The Court held that the search should not have gone past the top of the stairs where the blood trail ended. There were two issues presented:

- 1) Was the warrantless search of the appellee's bedroom permissible under the exigent circumstances exception to the warrant requirement of the Fourth Amendment?
- 2) If the search violated the Fourth Amendment, should the exclusionary rule apply?

I represented the appellant. Below is an excerpt of the brief where I address both issues. I argued that the warrantless search did not violate the Fourth Amendment and that even if it is a violation, the exclusionary rule should not apply. Only general feedback was provided, no editing from another party was provided.

SUMMARY OF ARGUMENT

The District Court erred in suppressing the narcotics and the gun recovered in Wolfe's bedroom and his statements to officers at South Detectives Division. The District Court incorrectly ruled that the exigent circumstances ended once Officers Gordon and Repici encountered Wolfe. Sergeant Evans arrived at a scene littered with shell casings and blood splattered on the door. He saw a severely injured Wolfe being assisted by the officers so he could be taken to the hospital. Officers Repici and Gordon did not have time to check for other victims. The perpetrator had also not been caught. Sergeant Evans reasonably believed he needed to search the property to see if there were more victims and confirm that the assailant was not in the home. This search did not violate the Fourth Amendment because it was permissible under the exigent circumstances exception.

Even if the search violated the Fourth Amendment, the exclusionary rule should still not apply. Sergeant Evans's conduct is within the good-faith exception of the exclusionary rule. His conduct was not deliberate, reckless, or grossly negligent. Additionally, the costs of suppressing the evidence far outweigh the benefits of applying the exclusionary rule. For this reason as well, the government requests that the order of the District Court suppressing evidence be reversed.

ARGUMENT

The District Court erred in suppressing the statements made by Wolfe and the physical evidence recovered from his bedroom. “[W]arrants are generally required to search a person's home or his person unless ‘the exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *Mincey v. Arizona*, 437 U.S. 385, 393-94 (1978). An exigency that is an exception to the warrant requirement is “the need to assist persons who are seriously injured or threatened with such injury. *Id.* at 392. Here, the District Court incorrectly ruled that the exigent circumstances had ceased before Sergeant Evans arrived at Wolfe’s home.

A. The warrantless search of the appellee’s bedroom was permissible under the exigent circumstances exception to the warrant requirement of the Fourth Amendment.

Sergeant Evans witnessed a frantic and gruesome scene when he arrived at Wolfe's home. He observed Wolfe bleeding profusely and wailing while being assisted to the back of a police vehicle. Evans also observed shell casings outside the home and a significant amount of blood on the carpet inside the home. He was informed by Officers Repici and Gordon that the perpetrator was still on the loose. The responding officers did not tell him that Ms. Brown reported no one else was at the home other than Wolfe, herself, her daughter Antonetta Wolfe, and their neighbor Kelly Acee. Sergeant Evans then entered the home to search for any other injured parties and the perpetrator. Once in Wolfe’s home Sergeant Evans observed large amounts of blood inside the property. The blood trail on the stairs could lead a reasonable person to believe that there may be an injured party on the second floor of the home. “Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. The need to protect or preserve life or avoid serious injury is justification for what would be

otherwise illegal absent an exigency or emergency.” *Mincey*, 437 U.S. at 392. Thus, fitting this case within the exigency exception of the warrant requirement.

In its ruling to suppress the evidence, the District Court relied on a single case, *Mincey v. Arizona*. In *Mincey v. Arizona*, a shooting occurred between officers and occupants of an apartment. 437 U.S. at 388. After the shooting, officers searched the apartment to see if there were any other injured victims. *Id.* They found multiple injured individuals throughout the apartment — a woman was found in a bedroom closet, another individual was found unconscious in his bedroom, and three others were found in the living room. *Id.* Homicide detectives then arrived on the scene and conducted a warrantless search of the entire apartment for four days recovering drugs and guns. *Id.* at 389. The government argued that the search of the apartment did not violate “any constitutionally protected right of privacy.” *Id.* at 391. The United States Supreme Court ruled for the petitioner and found that there were no exigent circumstances present that would warrant the extensive search. *Id.* at 394.

Sergeant Evans’s warrantless search is distinguishable from the unconstitutional search in *Mincey v. Arizona*. First, a factor that led the Court to find that there were no exigent circumstances was that “all the persons in Mincey’s apartment had been located before the investigating homicide officers arrived there and began their search.” *Id.* at 393. The shooter was also apprehended. *Id.* at 388. Here, Sergeant Evans did not know if there were any other injured individuals or if all the residents of Wolfe’s home were accounted for. The shooter had also not been detained. Evans testified:

“Since I did not know if there was another perpetrator, another person that was wounded, the officers were leaving with the complainant to get him to the hospital, I had to try to

determine and investigate if there was another person with a gun, [or] if there was another wounded person.” App. 73.

It is true when Ms. Brown was asked by Officers Repici and Gordon if there was anyone else besides herself, her daughter, neighbor, and Wolfe in the home, she responded no. Yet this information was never relayed to Sergeant Evans. Evans did not precisely know how long Officers Repici and Gordon were at Wolfe’s home but estimated that it was for a short period based on the radio call. Because of this short period, Officers Repici and Gordon could not have sufficiently investigated if there were any other injured individuals in the home. But even if Sergeant Evans knew about Ms. Brown’s statement, he acted reasonably in searching the house for other individuals. Sergeant Evans had to confirm that Ms. Brown’s information was correct. Ms. Brown went through a traumatic experience after witnessing her son lose a lot of blood. She could have easily lost track of who entered the house during that chaotic time. The assailant could have also hidden inside the home and threatened Ms. Brown not to reveal his presence. He cannot assume that Ms. Brown’s statement was correct during this emergency and acted as a reasonable officer by ensuring there were no other injured parties or assailants in the home.

Another factor distinguishing this case from *Mincey v. Arizona* is that in *Mincey*, just after the shooting, detectives conducted an extensive warrantless search of the entire apartment lasting four days. 437 U.S. at 389. “The officers opened drawers, closets, and cupboards, and inspected their contents; they emptied clothing pockets; they dug bullet fragments out of the walls and floors; they pulled up sections of the carpet and removed them for examination. Every item in the apartment was closely examined and inventoried, and 200 to 300 objects were seized.” *Id.* In this case, Sergeant Evans testified that he followed the blood trail up the stairs to the second floor to search for any injured individuals. And once he discovered the drugs on

Wolfe's bed, he immediately stepped outside the room and called Detective Ruth to request a search warrant. He continued to wait outside the room until Detective Ruth arrived, and a full search of the room did not occur until the next day when the search warrant was approved. Sergeant Evans acted consistently with the Fourth Amendment in conducting only a limited search.

It is also true that the radio call regarding the shooting stated that one person was shot. Yet the neighboring house's front door glass window was destroyed by the gunshots. This was not reported over the radio call and was only identified by Sergeant Evans after he arrived at the scene. The decision to enter a neighboring home to see if there were any other injured parties showcased Sergeant Evans's motivation to identify and assist any other potential victims of the shooting. Sergeant Evans testified:

“[J]ust like the other house, we went in there to make sure that there was nobody injured... I asked them if there was anybody in the house, if there was anybody injured. They said their daughter was upstairs and she was, you know, sleeping. And what I said to them was I would like to verify that the child is okay, you know, and, in fact, asleep and maybe not, you know, somehow wounded. I didn't want to take any chances.” App. 92.

This shows that key information may be missed if police officers only rely on the initial reports from the radio call. Sergeant Evans must be allowed to search for injured parties during this circumstance for the public interest. In *Mincey*, officers found injured parties in various areas of the apartment, such as a bedroom closet. 437 U.S. at 388. That search is like the search done by Sergeant Evans. The Court in *Mincey* did not find any issues with that initial search by the officers or rule it unconstitutional. If Sergeant Evans cannot search for other potential victims

during this tragic situation, it may lead to worse outcomes. The potential of the existence of injured individuals shows that the exigent circumstances had not ended.

Wolfe asserts that the actions of responding officers Repici and Gordon show that the exigent circumstances had ceased before the arrival of Sergeant Evans. Officers Repici and Gordon did not have their guns drawn while at Wolfe's residence. This, however, is not sufficient reasoning to find that the exigent circumstances ceased. The officers were responding to support Wolfe, who suffered a serious injury. These officers' goal was to save the life of Wolfe, and having their guns drawn may be inappropriate for that situation. On the other hand, officers Repici and Gordon may have just been careless or overly brave. Nevertheless, there is an objective standard, focusing on what a reasonable officer would do, such that it does not matter if officers Repici and Gordon were not reasonable.

In analyzing the actions of Sergeant Evans, the appellant's position should prevail, like in *Brigham City, Utah v. Stuart*. In *Brigham City*, police officers responded to a call at 3 a.m. regarding a loud party at a home. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 400-01 (2006). Once they arrived at the house, they heard shouting, and they observed juveniles drinking and one juvenile punching an adult in the face. *Id.* at 401. The officers then entered the home to stop the altercation and arrested the respondents for "contributing to the delinquency of a minor, disorderly conduct, and intoxication." *Id.* The respondents sought to suppress all the evidence the officers obtained after they entered the home, arguing the officers' warrantless search violated the Fourth Amendment. *Id.* The United States Supreme Court held "that the officers' entry was plainly reasonable under the circumstances." *Id.* at 406.

In its reasoning, the Court cited that the officers could hear a fight in the house that was "loud and tumultuous." *Id.* The officers also heard "thumping and crashing" and people yelling,

“stop, stop” and “get off me.” *Id.* This led the officers to investigate the back of the house where the noise was coming from; there, they witnessed children drinking and the fight. *Id.* The Court found that “the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning.” *Id.*

Similarly, when objectively viewing the circumstances of Sergeant Evans’s search, a reasonable person will find that it did not violate the Fourth Amendment. When Sergeant Evans arrived on the scene, he saw shell casings throughout the property. There was also blood on the front door of the house. He observed a bleeding and wailing Wolfe being assisted by officers Repici and Gordon and did not know the extent of his injuries. Sergeant Evans saw a lot of blood on the carpeting as Wolfe exited his home. He did not know if there were any other injured parties at the house and was told that the perpetrator was not apprehended. Officers Repici and Gordon did not have the opportunity to investigate if there were other injured individuals or the shooter in the house. This information shows that the emergency did not end because it was possible for more victims to have been inside the home. It was his duty as a police officer to confirm that there were no other victims. Sergeant Evans fulfilled that duty when he searched the house. His motivation was not to find evidence against Wolfe. Sergeant Evans testified, “seeing that blood I went into the property to clear the property.” App. 73. Furthermore, a blood trail on the stairs gives Sergeant Evans an objectively reasonable basis to continue his search onto the second floor.

But how could that be? There is indeed no photo evidence that showed blood anywhere on the second floor other than the top of the stairs. This, however, does not mean Sergeant Evans should have been barred from continuing his search. One possibility for the lack of blood past the top of the stairs is that an injured person may have placed an article of clothing over a wound

to stop the bleeding.¹ Another possibility is that a stray bullet from the shooting that occurred outside the home could have struck a person inside one of the rooms on the second floor. There have been many instances of these tragic incidents.² Sergeant Evans must confirm that this did not occur in this situation. Therefore, it is objectively reasonable for Sergeant Evans to believe that an injured party could still be somewhere on the second floor despite no photo evidence of blood past the top of the stairs.

That said, the blood trail is irrelevant in Sergeant Evans's search for the assailant. When Sergeant Evans entered the home to clear the property, the assailant was still at large. It is reasonable for Sergeant Evans to believe that the assailant was in Wolfe's home. The assailant could have chased Wolfe and entered his home to cause further harm. But once he saw officers Repici and Gordon arrive on the scene, he could have hidden in a room on the second floor and threatened those at the property to not reveal his location. "The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties." *Brigham City*, 547 U.S. at 406. The search for the assailant was to prevent further violence and restore order in that community. The damage to the other home in the neighborhood shows that more lives were still at risk with the assailant at large.

¹ See *Emergencies and First Aid – Direct Pressure to Stop Bleeding*, HARVARD HEALTH PUBLISHING, HARVARD MEDICAL SCHOOL (Feb. 3, 2017), <https://www.health.harvard.edu/staying-healthy/emergencies-and-first-aid-direct-pressure-to-stop-bleeding> (explaining how applying firm pressure on a wound with a "clean, heavy gauze pad, washcloth, T-shirt, or sock" will help slow or stop the bleeding).

² See Bob Brooks, *Victim speaks after injury by stray bullet while watching TV inside Philly home*, 6ABC ACTION NEWS (Dec. 24, 2021), <https://6abc.com/police-investigation-stray-bullet-philly-crime-gun-violence/11379048/> (detailing that a man was struck by a stray bullet while watching TV in bed). See also Nathan Solis, *Bullet fired from street kills 13-year-old Pasadena boy in his bedroom, police say*, LOS ANGELES TIMES (Nov. 21, 2021, 7:10 PM), <https://www.latimes.com/california/story/2021-11-21/bullet-fired-from-street-kills-13-year-old-pasadena-boy-in-his-bedroom-police-say> ("Three to five shots were fired outside his bedroom and at least one struck the boy, police said.").

Sergeant Evans does not “need ironclad proof of a likely serious, life-threatening injury to invoke the emergency aid exception.” *Michigan v. Fisher*, 558 U.S. 45, 49 (2009). In *Michigan v. Fisher*, police officers arrived at a home after receiving a disturbance complaint. Officers arrived at a chaotic scene with “a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground outside.” *Id.* at 45-46. The officers noticed “blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house.” *Id.* at 46. They saw the respondent screaming and throwing things in the house. *Id.* The officers also saw the respondent with a cut on his hand and asked if he needed medical attention. *Id.* Officers then tried to enter the home after the respondent refused to answer them. The respondent then pointed a gun at the officer. *Id.* He was arrested and “charged under Michigan law with assault with a dangerous weapon and possession of a firearm during the commission of a felony.” *Id.* The respondent moved to suppress the evidence obtained, arguing that the officers violated the Fourth Amendment. *Id.* at 46. This case was ultimately reviewed by the United States Supreme Court, and the Court held that the police entry into the respondent’s home was reasonable and did not violate the Fourth Amendment. The Court held that “it was reasonable to believe that Fisher had hurt himself (albeit nonfatally) and needed treatment that in his rage he was unable to provide, or that Fisher was about to hurt, or had already hurt, someone else.” *Id.* at 49.

The events surrounding this case are more serious than what was observed by police in *Brigham City* and *Fisher*. “The only injury police could confirm in *Brigham City* was the bloody lip they saw the juvenile inflict upon the adult.” *Id.* In *Michigan v. Fisher*, the officers observed a cut on the respondent’s hand and believed he required medical treatment. 558 U.S. at 46. Here, Sergeant Evans responded to a scene of a shooting where a person was shot. With the limited

information given to him at the time, there was a possibility of more victims. The blood throughout the home was not identified as being from Wolfe. The blood trail on the stairs created the possibility that there was an injured person on the second floor. The decision by Sergeant Evans to check on Wolfe's neighbors shows his motivation to confirm that there were no other injured parties.

The assailant was also still at large with the potential to cause more harm. Sergeant Evans was justified in looking to confirm that the assailant was not in Wolfe's home. Therefore, Sergeant Evans's decision to search the second floor and enter Wolfe's bedroom did not violate the Fourth Amendment because this situation was within the exigent circumstances exception.

B. Even if this Court finds that Sergeant Evans's warrantless search violated the Fourth Amendment, the exclusionary rule should not apply.

The exclusionary rule was established by case law to bar evidence obtained in violation of the Fourth Amendment. *Herring v. U.S.*, 555 U.S. 135, 139 (2009). It does not serve as an individual right. *Id.* at 141. Instead, it "applies only where it results in appreciable deterrence." The exclusionary rule aims to deter "deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Id.* at 144. There is, in addition, a good-faith exception to the exclusionary rule when the Court considers whether "law enforcement officers reasonably believed in good faith that their conduct was in compliance with governing law." *Davis v. United States.*, 564 U.S. 229, 245 (2011). The Court sees the exclusionary rule as a last resort, not a "necessary consequence of a Fourth Amendment violation." *Herring*, 555 U.S. at 140. In analyzing if the exclusionary rule applies, the Court must weigh the costs and benefits of suppression. *Id.* The benefits of deterrence must outweigh the costs. *Id.* This is a high burden because "the exclusionary rule's costly toll upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its] application." *Id.* at 140-41. Here, it was objectively

reasonable for Sergeant Evans to believe that his search complied with governing law. Sergeant Evans's conduct was not deliberate, reckless, or grossly negligent. And the benefits of deterrence do not outweigh the costs of not providing consequences to a person who committed harmful crimes.

Sergeant Evans, at most, was merely negligent. The goal of Sergeant Evans's search was not to find incriminating evidence against Wolfe. There's no testimony from Sergeant Evans or any other officers claiming he was looking for drugs or a gun. At the time of the search, he did not know that Wolfe was a felon or a drug dealer. Sergeant Evans testified that his intent in the search was to see if the perpetrator or other injured victims were in the home. His decision to check on the neighboring house to confirm that there were no injured parties is more evidence of his mission to find other potential victims.

The Court has "never suggested that the exclusionary rule must apply in every circumstance in which it might provide marginal deterrence." *Herring*, 555 U.S. at 141. "[T]o the extent that application of the exclusionary rule could provide some incremental deterrent, that possible benefit must be weighed against [its] substantial social costs." *Id.* Here, the costs of suppression far outweigh the benefits.

How so? First, if the Court grants the suppression, a guilty and dangerous person will be free in society. Wolfe will not be punished for participating in illegal activity. A significant amount of drugs were recovered from his bedroom. Wolfe has admitted to being the owner of those drugs. He has also stated that he sells drugs which ultimately harms his community and society. A gun was also recovered from Wolfe's bedroom. This gun had its serial number scratched off, often implying that a potential suspect does not want to be traced after illegally using a gun. Wolfe is a felon, so the recovery of drugs and the gun shows he has not learned

from his previous conviction. He is a repeat offender participating in illegal activity. Wolfe is a danger to society, and if the Court decides to suppress this evidence, he will continue to harm the community.

Additionally, granting the motion to suppress may undermine how police officers respond during emergencies. This may cause officers to hesitate during situations like what Sergeant Evans faced. Rather than act as police officers, they may now have to also act as constitutional lawyers. They will be forced to decipher during a chaotic scene if searching to save lives fits under the exigency exception. This may harm the public and can lead to situations in which lives are lost when they could have been easily saved. Police officers should not be burdened with this task. They already have a difficult job and being astute in constitutional law should not be a part of it.

Therefore, the Court should not apply the exclusionary rule. Sergeant Evans's search for victims of the shooting was objectively reasonable. The social costs of suppressing the drugs and the gun found in Wolfe's bedroom far outweigh any benefit of deterrence.

Applicant Details

First Name	Destinee
Middle Initial	E
Last Name	Haller
Citizenship Status	U. S. Citizen
Email Address	destineehaller23@gmail.com
Address	<div> <div>Address</div> <div> <div>Street</div> <div>845-2B Ivy Meadow Lane</div> <div>City</div> <div>Durham</div> <div>State/Territory</div> <div>North Carolina</div> <div>Zip</div> <div>27707</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	7864402594

Applicant Education

BA/BS From	Florida State University
Date of BA/BS	May 2019
JD/LLB From	Duke University School of Law
	https://law.duke.edu/career/
Date of JD/LLB	May 11, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Law and Contemporary Problems
Moot Court Experience	Yes
Moot Court Name(s)	Duke Law Moot Court Team

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Professional Organization

Organizations

Just the Beginning Organization

Recommenders

Frakes, Michael
michael.frakes@law.duke.edu
(919) 613-7185

Jones, Trina
Tjones@law.duke.edu
919-613-7177

Siegel, Neil S.
Siegel@law.duke.edu
919-613-7157

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Destinee Haller
845-2B Ivy Meadow Lane
Durham, NC 27707

June 23, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am writing to express my strong interest in clerking for you for the 2024-25 term. As an incoming third-year law student at Duke Law School, set to graduate in May of 2024, I believe that my skills and experiences make me an excellent fit for your chambers. Moreover, I am particularly drawn to your chambers because of your commitment to diversity in legal field. The law only benefits from diversity, and thus it is great to see judges who are passionate about fostering that diversity.

Throughout my academic and professional journey, I have thrived in fast-paced and demanding environments, where I have honed my ability to multitask and produce high-quality work. One of the most significant experiences that has contributed to my development is my time as a teacher. In this role, I effectively coordinated student assignments and served as a liaison between the administration, students, and parents. I collaborated with a small team to design a creative student curriculum, managed diverse student behaviors, and researched innovative approaches to student learning. These experiences have taught me invaluable strategies for working with individuals from different backgrounds and personalities, as well as the importance of clear and meaningful communication.

During my time at Duke Law, I have focused on enhancing my legal skills in various contexts. Competing in moot court competitions has sharpened my research, writing, and oral advocacy abilities, allowing me to effectively analyze complex legal issues and present compelling arguments. As the secretary of Moot Court, I have also utilized my organizational skills to collaborate with student group leaders, faculty, and judges, organizing events that foster interactions between students and legal experts across diverse fields.

Enclosed with this letter, you will find my resume, Duke Law and undergraduate transcripts, a writing sample, and three letters of recommendation from Professors Neil Siegel, Trina Jones, and Michael Frakes. I would be more than happy to provide any additional information or documents upon request.

Sincerely,
Destinee Haller

DESTINEE HALLER
845-2B Ivy Meadow Lane, NC 64108
destinee.haller@duke.edu | (786) 440-2594

EDUCATION

Duke University School of Law, Durham, NC

Juris Doctor expected, May 2024

GPA: 3.38

Honors: Fred H. and Betty S. Steffey Scholar
Moot Court Board, Secretary
Law and Contemporary Problems, Staff Editor

Activities Bolch Judicial Institute, Student Editor
Womxn of Color Collective (WOCC), Alumni/Development Chair
Black Law Student Association
LEAD Fellow
The Appellate Project (TAP)

Florida State University, Tallahassee, FL

Bachelor of Arts in History and African American Studies, *cum laude*, May 2019

GPA: 3.74

Honors: The Instant Impact Student Leader of the Year, 2018; Trailblazer Award, 2018

Thesis: *The Role of the Disc Jockey in the Civil Rights Movement*

Activities: Alliance for Black Women, *Founder*

EXPERIENCE

Covington & Burling LLP, Washington D.C.

Summer Associate, May 2023 –

Joe L. Webster, Magistrate Judge, Middle District of North Carolina

Judicial Extern, January 2023 – May 2023

- Assisted in drafting legal orders, opinions, and recommendations, ensuring accurate and concise communication of legal analysis and reasoning to support the judicial decision-making process.
- Collaborated with Judge Webster and fellow clerks to conduct thorough legal research and engage in detailed discussions, thereby facilitating informed decision-making on complex civil and criminal cases.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Boston, MA

IL LCLD Diversity Summer Associate, May 2022 – July 2022

- Drafted affidavit for a client in the Afghanistan Refugee Project.
- Researched Massachusetts Public Records Law to assist in a project regarding donations to public entities and worked collaboratively with research services to ensure the research was thorough.

Kansas City Public Schools, Kansas City, MO

Teacher, August 2019 – May 2021

- Taught English to 100+ high school students, using culturally relevant pedagogy, differentiated instruction, and modified lessons to accommodate students with disabilities, and while managing classroom and student behavior.
- Created a curriculum for teaching Art to students, modifying content and pedagogy as needed to make instruction available online and accessible to all students.
- Administered extracurriculars; served as Head Volleyball Coach for the volleyball team.

ADDITIONAL INFORMATION

Member of Delta Sigma Theta Sorority, Inc. Enjoys playing volleyball and taking my dog on walks. Presented on various diversity and inclusion topics at several conferences at FSU, including inclusivity, appropriation, and colorism. Volunteer with Duke Law's Veteran's Assistance Project and Fair Chance Project.

845-2B Ivy Meadow Lane
Durham, NC 27708

Destinee Haller
(786) 440 - 2594
destinee.haller@duke.edu

1240 NE 208 Terr
Miami, FL 33179

UNOFFICIAL TRANSCRIPT
DUKE UNIVERSITY SCHOOL OF LAW

2021 FALL TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Civil Procedure	Metzloff, T.	3.9	4.50
Contracts	Williams, S.	3.1	4.50
Torts	Frakes, M.	3.2	4.50
Legal Analysis, Research, Writing	Hernandez, S.	<i>Credit Only</i>	0.00

2022 WINTERSESSION

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Lawyering in the Executive Branch	Multiple	<i>Credit Only</i>	0.50

2022 SPRING TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Constitutional Law	Adler, M.	3.0	4.50
Criminal Law	Grunwald, B.	3.1	4.50
Property	Wiener, J.	3.7	4.00
Legal Analysis, Research, Writing	Hernandez, S.	3.1	4.00

2022 FALL TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Corporate Crime	Buell, S.	3.4	4.00
Federal Courts	Siegel, N.	3.5	4.00
Negotiation	Thomson, C.	3.5	3.00
Foreign Anti-Bribery Law	Brewster, R.	3.5	2.00
Law & Lit: Race & Gender	Jones, T.	3.7	3.00

2023 SPRING TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
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Judicial Decisionmaking	Lemos, M.	3.6	3.00
Ethics in Action	Metzloff, T.	3.8	2.00
Administrative Law	Benjamin, S.	3.2	3.00
Race and Law Speaker's Series	Jones, T.	<i>Credit Only</i>	1.00
Externship	Gordon, A.	<i>Credit Only</i>	3.00
Externship Seminar	Gordon, A.	<i>High Pass</i>	1.00

TOTAL CREDITS: 60
 CUMULATIVE GPA: 3.38

Florida State University

Office of the Registrar
282 Champions Way
PO Box 3062480
Tallahassee, Florida 32306-2480

Name: Destinee Elizabeth Haller
Student ID: 200192595
Birthdate: 05/23/1997
Residency: Florida Resident (USA)
Print Date: 10/31/2018

Unofficial Transcript

ALL CREDIT HOURS ON THIS RECORD REFLECTED IN SEMESTER HOURS
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Transfer Credits

Transfer Credit from Florida International University
Applied Toward Undergraduate Studies Program

2012

Trm	Course	Description	Grd	GB	RP	Input	Eval	Course	Description	Grd	GB	RP	Taken	Passed	Points
FALL	CGS2060	INTRO TO MICRO COMP	B		HSCR	3.000	0.000	ENC2135	RESEARCH, GENRE, AND CONTEXT	A	GRD		3.000	3.000	12.000
		Term Totals				3.000	0.000	IFS2049	THIRD WORLD CINEMA	A-	GRD		3.000	3.000	11.250
								PSB2000	INTRO BRAIN & BEHAVR	B	GRD		3.000	3.000	9.000
								STA1013	STATISTICS THRU EXAMP	A	GRD		3.000	3.000	12.000
								WOH1023	MODRN WORLD TO 1815	B+	GRD		3.000	3.000	9.750

2013

Trm	Course	Description	Grd	GB	RP	Input	Eval				Taken	Passed	GPA	Points
FALL	EVR1001	ENV SCI & SUSTAINABILITY	A-		HSCR	3.000	0.000	Term GPA	3.600	Term Totals	15.000	15.000	15.000	54.000
FALL	EVR1001L	ENV SCI & SUSTAIN LAB	A		HSCR	1.000	0.000	Transfer Term GPA	3.490	Transfer Totals	48.000	48.000	48.000	167.500
FALL	EVR1017	GLOBAL ENV & SOC	A		HSCR	3.000	0.000	Combined Term GPA	3.516	Comb Totals	63.000	63.000	63.000	221.500
FALL	SOP2004	INTRO SOCIAL PSY	A		HSCR	3.000	0.000							
SPR	CGS2518	COMPUTER DATA ANALYSIS	B		HSCR	3.000	0.000	Cum GPA	3.600	Cum Totals	15.000	15.000	15.000	54.000
		Term Totals				13.000	0.000	Transfer Cum GPA	3.490	Transfer Totals	48.000	48.000	48.000	167.500
								Combined Cum GPA	3.516	Comb Totals	63.000	63.000	63.000	221.500
2014														

2014

Trm	Course	Description	Grd	GB	RP	Input	Eval	Term Honor:	DEAN'S LIST
FALL	FRE1130	FRENCH I	B		HSCR	5.000	0.000		
FALL	INR3243	INTL REL LAT AMERICA	B+		HSCR	3.000	0.000		
FALL	PHI2600	INTRO ETHICS	C+		HSCR	3.000	0.000		
FALL	REL3308	STUDIES IN WORLD REL	A-		HSCR	3.000	0.000		
SPR	CRW2001	INTRO TO CREST WRIT	A		HSCR	3.000	0.000		
SPR	SYD3801	SOCIOLOGY OF GENDER	A		HSCR	3.000	0.000		
SPR	SYG3002	BASIC IDEAS OF SOC	B-		HSCR	3.000	0.000		
		Term Totals				23.000	0.000		

2015

Trm	Course	Description	Grd	GB	RP	Input	Eval	Course	Description	Grd	GB	RP	Taken	Passed	Points
SPR	ANT2000	INTRO ANTHROPOLOGY	A-		HSCR	3.000	0.000	AMH4172	THE CIVIL WAR ERA	B+	GRD		3.000	3.000	9.750
SPR	DEP2000	HUMAN GROWTH DEV	A		HSCR	3.000	0.000	EUH2000	ANCNT-MEDIEVL CVLZTN	A	GRD		3.000	3.000	12.000
SPR	SYP3456	SOCIETIES IN WORLD	A		HSCR	3.000	0.000	HUM3321	MULTICUL FILM/CULTUR	A	GRD		3.000	3.000	12.000
		Term Totals				9.000	0.000	IFS3055	SCI-FI, DYSTOPIA, & EVIL	A	GRD		3.000	3.000	12.000

Beginning of Undergraduate Record

2015 Fall

Program: Undergraduate Studies
Plan: Pre-History Major

			<u>Taken</u>	<u>Passed</u>	<u>GPA</u> <u>Hrs</u>	<u>Points</u>
Term GPA	3.813	Term Totals	12.000	12.000	12.000	45.750
Transfer Term GPA		Transfer Totals	24.000	24.000	0.000	0.000
Combined Term GPA	3.813	Comb Totals	36.000	36.000	12.000	45.750
Cum GPA	3.694	Cum Totals	27.000	27.000	27.000	99.750
Transfer Cum GPA	3.490	Transfer Totals	72.000	72.000	48.000	167.500
Combined Cum GPA	3.563	Comb Totals	99.000	99.000	75.000	267.250
Term Honor:		DEAN'S LIST				

Florida State University

Office of the Registrar
282 Champions Way
PO Box 3062480
Tallahassee, Florida 32306-2480

Name: Destinee Elizabeth Haller
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Unofficial Transcript

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2016 Summer

Program: Bachelor's Degree
Plan: History Major
Plan: Philosophy Additional Major

Course	Description	Grd	GB	RP	Taken	Passed	Points	Course	Description	Grd	GB	RP	Taken	Passed	Points
AMH4231	U.S. 1920-1945	A	GRD		3.000	3.000	12.000	AMH2097	RACE/ETHNICITY IN US	A-	GRD		3.000	3.000	11.250
SPC2608	PUBLIC SPEAKING	A-	GRD		3.000	3.000	11.250	AMH4572	BLACK AMER SINC 1877	A	GRD		3.000	3.000	12.000
								EUH4465	WEIMAR AND NAZI GERMANY	A	GRD		3.000	3.000	12.000
								FRE1121	ELEMENTARY FRENCH II	B+	GRD		4.000	4.000	13.000
								IDS2920	UROP COLLOQUIUM	S	SOU		1.000	1.000	0.000
								LAH4723	RACE/CLASS IN LAT AM	B+	GRD		3.000	3.000	9.750

			Taken	Passed	GPA Hrs	Points				Taken	Passed	GPA Hrs	Points
Term GPA	3.875	Term Totals	6.000	6.000	6.000	23.250	Term GPA	3.625	Term Totals	17.000	17.000	16.000	58.000
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000	Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Term GPA	3.875	Comb Totals	6.000	6.000	6.000	23.250	Combined Term GPA	3.625	Comb Totals	17.000	17.000	16.000	58.000
Cum GPA	3.727	Cum Totals	33.000	33.000	33.000	123.000	Cum GPA	3.681	Cum Totals	64.000	64.000	62.000	228.250
Transfer Cum GPA	3.490	Transfer Totals	72.000	72.000	48.000	167.500	Transfer Cum GPA	3.490	Transfer Totals	72.000	72.000	48.000	167.500
Combined Cum GPA	3.586	Comb Totals	105.000	105.000	81.000	290.500	Combined Cum GPA	3.598	Comb Totals	136.000	136.000	110.000	395.750

Term Honor: DEAN'S LIST

2016 Fall

Program: Bachelor's Degree
Plan: History Major
Plan: Philosophy Additional Major

Course	Description	Grd	GB	RP	Taken	Passed	Points
AFA3930	SPECIAL TOPICS Topic: Malcom X:Life, Impact & Legacy	B+	GRD		3.000	3.000	9.750
AMH4571	BLACK AMER TO 1877	A-	GRD		3.000	3.000	11.250
FRE1120	ELEMENTARY FRENCH I	A-	GRD		4.000	4.000	15.000
IDS2920	UROP COLLOQUIUM	S	SOU		1.000	1.000	0.000
PHI2010	INTRO TO PHILOSOPHY	A-	GRD		3.000	3.000	11.250

			Taken	Passed	GPA Hrs	Points
Term GPA	3.635	Term Totals	14.000	14.000	13.000	47.250
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Term GPA	3.635	Comb Totals	14.000	14.000	13.000	47.250
Cum GPA	3.701	Cum Totals	47.000	47.000	46.000	170.250
Transfer Cum GPA	3.490	Transfer Totals	72.000	72.000	48.000	167.500
Combined Cum GPA	3.593	Comb Totals	119.000	119.000	94.000	337.750

Term Honor: DEAN'S LIST

2017 Spring

Program: Bachelor's Degree
Plan: History Major
Plan: Philosophy Additional Major

Program: Bachelor's Degree
Plan: History Major
Plan: African-American Studies Additional Major

2017 Fall

Course	Description	Grd	GB	RP	Taken	Passed	Points
EUH4452	FR REVOL 1715-1795	A	GRD		3.000	3.000	12.000
FRE2220	INTERMEDIATE FRENCH	B	GRD		4.000	4.000	12.000
HIS4935	SENIOR SEMINAR Topic: SR SEM: History of Slavery	A-	GRD		3.000	3.000	11.250
IFS3024	SOCIOLOGY OF HIP HOP CULTURE	A	GRD		3.000	3.000	12.000
IFS3112	GUNS, DRUGS, AND SLAVES	A	GRD		3.000	3.000	12.000

			Taken	Passed	GPA Hrs	Points
Term GPA	3.703	Term Totals	16.000	16.000	16.000	59.250
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Term GPA	3.703	Comb Totals	16.000	16.000	16.000	59.250
Cum GPA	3.686	Cum Totals	80.000	80.000	78.000	287.500
Transfer Cum GPA	3.490	Transfer Totals	72.000	72.000	48.000	167.500
Combined Cum GPA	3.611	Comb Totals	152.000	152.000	126.000	455.000

Term Honor: DEAN'S LIST

2018 Spring

Program: Bachelor's Degree
Plan: History Major
Plan: African-American Studies Additional Major

Florida State University

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282 Champions Way
PO Box 3062480
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Course	Description	Grd	GB	RP	Taken	Passed	Points
AFA2000	INTRO AFRO-AMER EXPE Topic: Intro to African Amer Studies	A	GRD		3.000	3.000	12.000
AMH4684	WOMEN & CHILDREN CRM Topic: Women & Children Civil Rights	A	GRD		3.000	3.000	12.000
HIS4930	SPECIAL TOPICS Topic: Black History through Film	A	GRD		3.000	3.000	12.000
LDR2160	PEER LEADERSHIP	A	GRD		3.000	3.000	12.000
SYD4700	RACE/MINORTY RELATNS	A-	GRD		3.000	3.000	11.250

COMPLETED 240 HOURS OF SERVICE TO THE COMMUNITY

			Taken	Passed	GPA Hrs	Points
Term GPA	3.950	Term Totals	15.000	15.000	15.000	59.250
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Term GPA	3.950	Comb Totals	15.000	15.000	15.000	59.250
Cum GPA	3.728	Cum Totals	95.000	95.000	93.000	346.750
Transfer Cum GPA	3.490	Transfer Totals	72.000	72.000	48.000	167.500
Combined Cum GPA	3.647	Comb Totals	167.000	167.000	141.000	514.250
Term Honor:		DEAN'S LIST				

Undergraduate Career Totals

			Taken	Passed	GPA Hrs	Points
Cum GPA:	3.728	Cum Totals	95.000	95.000	93.000	346.750
Trans Cum GPA	3.490	Trans Totals	72.000	72.000	48.000	167.500
Comb Cum GPA	3.647	Comb Totals	167.000	167.000	141.000	514.250

End of Undergraduate

End of Academic Transcript

Beginning of Service Transcript

Community Service Hours For 2018 Spring			
Issue	Agency	Service Task	Hours
Various	Florida State University	Office Support	40
Various	Southern Scholarship Foundatio	Office Support	200
Service Hours for 2018 Spring			240

Cumulative Service Hours			240
Community Service Hours For 2017 Fall			
Issue	Agency	Service Task	Hours
Info & Referral	FSU Student Activities Center	Special Event	40
Various	Florida State University	Fundraising	20
Various	Southern Scholarship Foundatio	Office Support	200
Service Hours for 2017 Fall			260
Cumulative Service Hours			500

Community Service Hours For 2017 Summer			
Issue	Agency	Service Task	Hours
Education Higher Ed	FSU Ctr Acad Reten/Enhanc CARE	Special Event	3
Homelessness	Habitat for Humanity	Home Building/Improvements	4
Service Hours for 2017 Summer			7
Cumulative Service Hours		507	

Community Service Hours For 2017 Spring			
Issue	Agency	Service Task	Hours
Various	OTHER	Environmental Improvement	30
Various	Southern Scholarship Foundatio	Fundraising	50
Service Hours for 2017 Spring			80
Cumulative Service Hours		587	

Community Service Hours For 2016 Fall			
Issue	Agency	Service Task	Hours
Arts/Culture	Tall. Symphony Youth Orchestra	Office Support	25
Various	OTHER	Organize Donation Drive	6
Various	OTHER	Cleaning	3
Various	OTHER	Animal Care	3
Service Hours for 2016 Fall			37
Cumulative Service Hours		624	

Community Service Hours For 2016 Summer			
Issue	Agency	Service Task	Hours
Children/Youth	Upward Bound Program	Mentoring	23
Various	OTHER	Sorting Donations	2
Service Hours for 2016 Summer			25
Cumulative Service Hours		649	

Community Service Hours For 2016 Spring			
Issue	Agency	Service Task	Hours
Children/Youth	Dade Street Community Center	Child Care	2
Children/Youth	Palmer Monroe	Special Event	5

Florida State University

Office of the Registrar
282 Champions Way
PO Box 3062480
Tallahassee, Florida 32306-2480

Name:

Student ID:
Birthdate:
Residency:
Print Date:

Destinee Elizabeth Haller

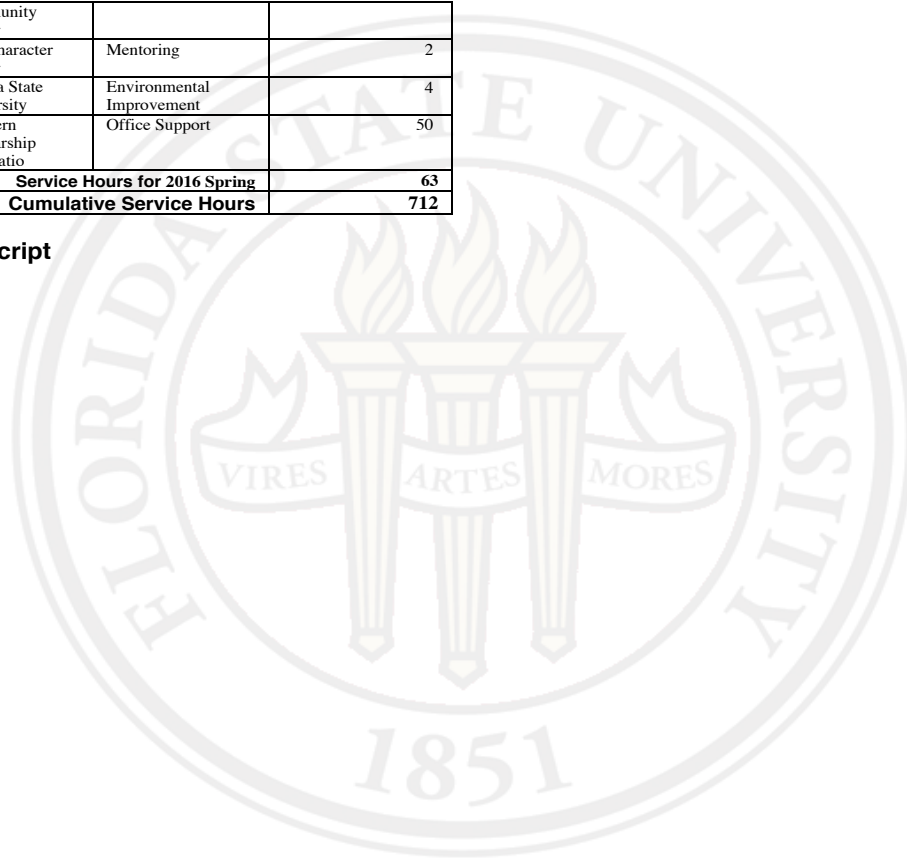
200192595
05/23/1997
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10/31/2018

Unofficial Transcript

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	Community Center		
Education PK-12	The Character Center	Mentoring	2
Various	Florida State University	Environmental Improvement	4
Various	Southern Scholarship Foundatio	Office Support	50
Service Hours for 2016 Spring			63
Cumulative Service Hours			712

End of Service Transcript



Duke University School of Law
210 Science Drive
Durham, NC 27708

June 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Destinee Haller

Dear Judge Walker:

I am writing to recommend enthusiastically Destinee Haller for a federal judicial clerkship. She is a wonderful asset to any classroom – very reflective, intellectually curious, and clever. I have no doubt whatsoever that she would be a tremendous addition to your judicial office.

I first met Destinee in the fall of 2021 when she was a student in my first-year Torts course. Destinee was perhaps the most inquisitive and intellectually curious student in my class of 49 that year. She is one of the most memorable students I have taught in my time at Duke. She frequently volunteered during class discussions, likely on a daily basis. Her contributions in those instances were excellent. Between those moments and my other interactions with her during cold-calls and office-hours discussions, it became clear to me that she was engaging with concepts and arguments that were at a high level of sophistication. She also picked up on the legal reasoning skills I was trying to impart very quickly. I strongly believe that my interactions with Destinee during the class discussions were quite helpful to her classmates in their own development of legal reasoning skills and their refinement of the tort doctrines we were learning. As you can imagine, first semester 1L students go through a lot of development quickly and Destinee was at the forefront of this development in her class. Destinee would often introduce new hypotheticals that facilitated a very nice clarification of the materials at hand. Her inquiries further contributed to my own ongoing development. After over a decade of teaching Torts, I continue to expand on my understanding of the contours of tort law and I attribute this to my interactions with my students, particularly students like Destinee.

My approach to teaching Torts is to try and construct as many counterarguments as possible to the main arguments at play—often aided by pairings of similar cases—and then to consider the best counterarguments to those original counterarguments. While my goal is to challenge the students in this regard and push the conversation a way down this path, I try to halt this process at some point for the sake of simplicity. Destinee demonstrated no difficulty in keeping up with this progression and in fact is skilled at pointing out any simplifications that I make and pushing the conversation one step further. These are all signs of a budding lawyer with a keen intuition.

All in all, it is a true pleasure to be able to teach and intellectually engage with Destinee. Her inquisitiveness and deep analytical reasoning truly stand out in class and beyond. She would be an excellent addition to your office, and I am confident that she would benefit from the opportunity. If you have any questions, please do not hesitate to contact me at michael.frakes@law.duke.edu or 919-613-7185.

Sincerely,

Michael D. Frakes
A. Kenneth Pye Professor of Law and Professor of Economics,
Duke University Research Associate,
National Bureau of Economic Research

Michael Frakes - michael.frakes@law.duke.edu - (919) 613-7185

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Destinee Haller

Dear Judge Walker:

I am delighted to recommend Destinee Haller for your consideration as a judicial clerk. Destinee was a student in my Law and Literature: Race and Gender seminar in the fall of 2022. She also enrolled in the Race and the Law Speakers Series, a one-credit, ungraded course that I offered in the spring of 2023. Because of the small size of the seminar and Destinee's deep engagement with the material in both classes, I believe that I know her well. Destinee is a simply outstanding student. She is extremely smart and hard working. In the seminar, she was always well prepared for class and she actively participated in class discussions. I was impressed by her ability to handle complex and sometimes controversial subject matter with a deft hand and in a manner that respectfully engaged competing viewpoints. Her peers appeared to be equally impressed; when Destinee offered commentary or asked questions, everyone listened.

The seminar also revealed that Destinee is a meticulous reader. She does not miss anything, even seemingly minor details. This attention to detail allowed Destinee to observe subtle nuances in the material that less discerning students overlooked. Indeed, her written reflections were among the best that I have received in almost three decades of teaching. Destinee's weekly submissions were clearly and elegantly written, and displayed a wisdom that was surprising in someone of her age.

The Speakers Series had a much larger enrollment, consisting of approximately 130 students. Even in a class this large, Destinee managed to stand out. Each week, after reading assigned materials, students were required to submit two questions from which my TAs and I selected about 10 to present to the week's speaker. Week after week, Destinee's questions made the cut (from about 260 questions). This was astonishing given the number of students and the range of talent reflected in the class. Yet, Destinee's questions reflected a depth of knowledge and an intellectual curiosity and rigor that could not be ignored.

I know that Destinee has given a lot of thought to clerking. During her first year of law school, she approached me to learn more about judicial clerkships. I strongly encouraged her to clerk, not for the credential, but because I believe clerking presents young lawyers with an unparalleled opportunity to learn and to grow. Destinee subsequently sought out a judicial externship with a magistrate judge, which she found deeply rewarding.

If you hire Destinee, I believe you will be extremely pleased with her work and delighted with her presence in your chambers. Destinee is smart. She is fair. She is incredibly hard working. And she is kind. In short, I believe she is everything that one could hope for in a clerk.

Please let me know if I can be of further assistance.

Sincerely,

Trina Jones
Jerome M. Culp Professor of Law

Trina Jones - Tjones@law.duke.edu - 919-613-7177

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Destinee Haller

Dear Judge Walker:

Destinee Haller is very bright and asks insightful questions. She loves learning about the law and will add much needed diversity to the legal profession. She exudes kindness and professionalism. I am very pleased to recommend her for a clerkship in your chambers.

Destinee enrolled in my Federal Courts class during the Fall 2022 semester. I view Federal Courts as one of the most demanding classes that the Law School offers—and as critical for clerking and litigating. Many Duke Law students avoid the class because of its formidable reputation and potentially depressing effect on their grade point averages; for example, only twenty-two students enrolled in my course. The class covers challenging subjects: *Marbury v. Madison* (1803) as a federal courts case; congressional control of federal-court jurisdiction; U.S. Supreme Court reform, including Court expansion; the justiciability doctrines; the ins and outs of state sovereign immunity; Section 1983 litigation and individual officer immunity; the abstention doctrines; U.S. Supreme Court review of state-court judgments; and federal habeas-corpus review of state-court criminal convictions and sentences.

Destinee ignored the suggestions of her classmates to play it safe by taking classes that would be sure to increase her grade point average; she wanted to challenge herself and learn as much as she could. She prepared vigorously for my class, and so she was always prepared when I called on her. She also volunteered to answer difficult questions or apparent puzzles that I would pose to the class, and she routinely stayed after class and attended office hours to ask me penetrating questions about the doctrines we were learning. I was so impressed by the quality of her participation and questions that I advised her to apply for judicial clerkships.

My Federal Courts class attracted many of the most talented students in the Law School. To distinguish among them, I wrote a very challenging final examination. Destinee performed well, earning a 3.5 in the course.

Destinee has a compelling personal story. She was raised by a single mother who went to school and worked several jobs while protecting Destinee and her brother from the injustices of their surroundings. Destinee attended the same high school as Trayvon Martin. As she told me, "One day he was a tall, popular upperclassman, and the next day he was gone. I feel as though I came to consciousness during the trial." Unlike almost all of her classmates, she decided to go to law school after hearing President Obama issue a call for legal and social change following the murder of George Floyd. The legal profession generally, and the ranks of our nation's law clerks specifically, would benefit enormously from greater diversity of life experiences and personal perspectives, and Destinee has much to contribute in this regard.

Destinee would fit in well in the close confines of chambers. She is caring, respectful, mature, professional, and humble. She is uncommonly eager to keep learning and improving, and she wants to clerk for a judge who would be willing to mentor her both during the clerkship and beyond.

Destinee Haller is a strong candidate for a judicial clerkship—stronger than her overall grade point average of 3.38, which reflects the learning and adjusting that she had to do during her first year of law school. I hope that you will give her application serious consideration. Please feel free to contact me if I can be of further help as you consider her qualifications. I would be very pleased to speak with you about her.

Sincerely yours,

Neil S. Siegel
David W. Ichel Professor of Law and Political Science
Associate Dean for Intellectual Life
Director, Duke Law Summer Institute on Law and Policy

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Writing Sample

This is a memorandum written for my Legal Analysis, Research, and Writing course. In the memorandum, we were tasked with examining the applicability of Federal Rule of Civil Procedure 41(d) for the consideration of attorney's fees.

I am happy to provide more context for the assignment if needed.

ISSUE PRESENTED

Federal Rule of Civil Procedure 41(d) states that if a plaintiff brings an action previously dismissed against the same defendant with the same claim, the court “may order the plaintiff to pay all or part of the costs of that previous action.” On December 1, 2021, Tray Sparks appealed the district court's Order, which granted the defendant-appellee's motion for Attorney's Fees under Rule 41(d). The question arises whether an award of attorney's fees under Rule 41(d) reflects the court's attempt to redistribute the litigation burdens without any demonstration of Congressional intent.

STATEMENT OF THE CASE

Tray Sparks, the Plaintiff-Appellant, is the owner of a cattle ranch located in Granite County, Montana. JA3. Tray decided to sell the land surrounding his cattle ranch, which was deemed unsuitable for livestock, to his brother's corporation known as Carl Sparks Enterprises, Inc. doing business as Pine Ridge Ski Area (Carl). JA3. As part of the land sale to Carl Sparks Enterprises, Tray took the necessary steps to reserve an easement known as High Pasture Road, which served as a means for him to access his remaining land from US 93. JA3. Every summer, Tray utilized High Pasture Road to graze his cattle. JA28.

In 2021, Tray was dismayed to discover that Carl had deliberately obstructed his access to High Pasture Road. JA4. On February 15, 2021, Tray issued a demand to Carl, urging him to cease blocking High Pasture Road, as Tray firmly believed that such actions constituted a nuisance under the laws of Montana. JA4. Carl refused to comply. JA4. As Carl persisted in his refusal to restore Tray's access to High Pasture Road, Tray's endeavors to develop his ranch were continuously impeded. JA4. Due to the ongoing issue with blocked access to High Pasture Road,

Tray encountered difficulties in securing loans from banks. JA4. Additionally, Tray has encountered significant obstacles in both surveying and selling his lots. JA4. Furthermore, without access to High Pasture Road, Tray is unable to initiate any construction activities on his land. JA4. Time is of the essence for Tray due to the short summers and harsh winters in Montana. JA3. The loss of a construction season under such conditions can result in irreparable consequences. JA5. In response to this looming threat, Tray filed Cause No. 187 against Carl on June 4, 2021, alleging nuisance and fraud, and seeking both monetary and injunctive relief. JA9.

Subsequently, the court scheduled a hearing for July 26, 2021, to address Tray's request for temporary injunctive relief. JA10. In preparation for the hearing, the court issued a pretrial order mandating that Tray and Carl submit their proposed exhibits, stipulations, witness lists, and excerpts of depositions by July 12, 2021. JA10. In anticipation of the hearing, Tray designated Kate Albey as an expert. JA23. Albey represented herself as a Certified Public Accountant (CPA). JA23. When Albey was deposed by Carl, she admitted that she did not receive a degree in accounting and that she did not pass the CPA exam. JA23. Carl filed a motion to strike Albey, but instead of pursuing that course of action, Tray chose to withdraw Albey from her previous designation as an expert. JA23. Tray decided to withdraw Albey because he does not wish to engage in futile litigation. JA23. With each passing day, Tray loses valuable time to initiate construction on his ranch while this lawsuit persists. *See* JA5.

On July 23, 2021, after Tray's withdrawal of Albey, he filed an emergency motion seeking an extension of the pretrial order deadlines. JA10. The court denied Tray's emergency motion on the same day as his request. JA10. Following that denial, Tray filed a stipulation of dismissal without prejudice. JA10. Carl later tendered an answer to the original complaint. JA10.

Following the dismissal, Tray refiled his complaint without the fraud claim. JA10. Following Tray's submission of the new complaint, Carl made a request for attorney's fees related to the previous claim, with the expectation that they would be paid within 30 days of the court's order as per Rule 41(d). JA10. In addition, Carl requested that the court put a stay on the action until Tray fulfilled the payment of those fees. JA10. Furthermore, Carl requested that the court dismiss Tray's action with prejudice if the fees were not promptly paid. JA10. On September 15, 2021, the court granted Carl's motion and issued an order requiring Tray to pay Carl's attorney's fees within 30 days of the order. JA32. On October 18th, Carl informed the court that Tray had failed to pay the attorney fees as ordered, leading the court to enter a final judgment and dismiss Tray's claim with prejudice. JA33. On December 1, 2021, Tray appealed the court's final judgment and order to the United States Court of Appeals for the Ninth Circuit. JA33.

STANDARD OF REVIEW

The standard of review for an award of attorney's fees is typically abuse of discretion. *See Maag v. Wessler*, 993 F.2d 718, 719 (9th Cir. 1993). However, in this case, the standard of review is de novo because it involves the interpretation of a Federal Rule, which is considered a question of law and is reviewed de novo. *See Harbeson v. Parke Davis, Inc.*, 746 F.2d 517, 520 (9th Cir. 1984).

ARGUMENT

- I. Attorney's fees are not available through FRCP 41(d) because the plain language and purpose of the rule do not demonstrate congressional intent to alter the American rule.

The lower court's ruling should be reversed because Rule 41(d) does not grant the court the discretion to award attorney's fees. Rule 41(d) was specifically designed to discourage vexatious litigation and forum shopping. *Rogers v. Wal-Mart Stores, Inc.*, 230 F.3d 868, 875 (6th Cir. 2000). It states that "if a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court: (1) may order the plaintiff to pay all or part of the costs of that previous action: and (2) may stop the proceedings until the plaintiff has complied." Fed. R. Civ. P. 41(d). Rule 41(d) is a form of statutory authorization. *See Esquivel v. Arau*, 913 F.Supp.1382, 1390 (9th Cir. 1996). Therefore, the court's power is confined to the application of Rule 41(d). *See Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120, 126 (1989) (stating that the "task of the court is to apply the text, not to improve upon it" in regards to the interpretation of Federal Rule of Civil Procedure 11). Thus, it is essential to establish the intent of Congress in order to make a determination. *Id.* The Court is not empowered to modify Rule 41(d) to pursue a specific objective that would compromise the textual interpretation. *See id.*

When interpreting statutes that encroach upon common law principles, there is a presumption in favor of maintaining the 'long-established and familiar principles' that have been entrenched over time. *See Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952). One such principle is the American Rule, which generally stated that the prevailing party in a lawsuit is not entitled to seek reimbursement for attorney's fees. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 245 (1975). Given that attorney's fees were historically governed by the American Rule, a common-law principle, the court is obliged to presume that Congress intended to uphold its fundamental principles. *See id.* It is important to note that the American Rule does have limited exceptions, including specific provisions for attorney's fees under certain federal statutes, cases

involving willful disobedience of a court order, and instances of bad faith. *See id.* The Supreme Court has consistently rejected requests to expand these exceptions, as it considers it inappropriate for the Judiciary to redistribute the burdens of litigation without legislative guidance. *Id.* at 247. Therefore, in this case, this Court should likewise reject the request to broaden the exceptions to the American Rule, including Rule 41(d), due to the lack of legislative guidance demonstrating such intent. *See id.*

Despite the existence of the American Rule, a circuit split exists regarding whether Rule 41(d) can authorize an award of attorney's fees. *Portillo v. Cunningham*, 872 F.3d 728, 738 (5th Cir. 2017). To date, this Court has not issued a decision regarding the authorization of attorney's fees under Rule 41(d). However, several other Circuits have issued opinions. The Sixth Circuit has held that attorney fees cannot be awarded under Rule 41(d) because the rule does not explicitly provide for them. *See Rogers*, 230 F.3d at 874. The Court reasoned that historical practice indicated that Congress has consistently required explicit authorization when intending to allow attorney fees. *Id.* The Sixth Circuit is correct to acknowledge that Congress possesses knowledge of the distinction between 'costs' and 'attorney fees' and exercised caution in its language when approving Rule 41(d). *Id.*

Both the Eighth and Tenth Circuits have upheld the awarding of fees without delving into an extensive discussion. *See Portillo*, 872 F.3d at 738. In a concise Per Curiam opinion, the Eighth Circuit held that attorney's fees could be awarded under Rule 41(d) without specifically analyzing whether the term 'costs' encompasses attorney's fees. *See Evans v. Safeway Stores, Inc.*, 623 F.2d 121, 121- 22 (8th Cir. 1980). In an unpublished opinion, in a case where the plaintiff-appellant appeared pro se, the Tenth Circuit held that the trial court possesses the discretion to impose both

costs and attorney's fees under Rule 41(d). *See Meredith v. Stovall*, No. 99-350, 2000 WL 807355, at *1 (10th Cir. June 23, 2000). However, in its holding, the Tenth Circuit explicitly referenced both 'costs' and 'attorney's fees,' clearly indicating that the court recognizes a distinction between the two terms. *See id.*

The Third, Fourth, Fifth, and Seventh Circuits have held that attorney's fees are only available under Rule 41(d) if the underlying statute explicitly defines costs to include fees. *Portillo*, 872 F.3d at 738. These Circuits relied on the precedent established in *Marek v. Chesny*, 473 U.S. 1, 10 (1985), where the interpretation of Rule 68 of the Federal Rules of Civil Procedure (FRCP) considered attorney's fees as part of the definition of 'costs' only when the underlying statute explicitly included fees within the scope of costs. *See also Portillo*, 872 F.3d at 739; *see also Esposito v. Piatrowski*, 223 F.3d 497, 500 (7th Cir. 2000); *Andrews v. Am. 's Living Ctrs., LLC*, 827 F.3d 306, 309-12 (4th Cir. 2016); *Garza v. Citigroup Inc.*, 881 F.3d 277, 279 (3rd Cir. 2018). While this position acknowledges the importance of the American Rule in its interpretation, it neglects to consider the distinct procedural postures of Rule 68 and Rule 41(d). *See Marek*, 473 U.S. at 10. Rule 68 provides for settlement offers and Rule 41(d) provides for dismissals. The divergent procedural postures of the Rules make them incompatible for direct comparison since they have different capacities to limit a plaintiff's access to the court. *See Marek*, 473 U.S. at 10.

This Court should conclude that attorney's fees are not available under Rule 41(d) since the rule's plain language and purpose do not indicate any congressional intent to modify the American rule. *See Rogers*, 230 F.3d at 874. First, neither the plain meaning of the term "costs" nor the broader statutory scheme of the Federal Rules supports the inclusion of attorney's fees within its definition. *See id.* The fact that multiple Federal Rules of Civil Procedure explicitly reference

attorney's fees suggests that the drafters of these Rules were aware of the distinction between "costs" and "attorney's fees." *See id.* at 875. Second, allowing the awarding of attorney's fees under Rule 41(d) would effectively create a new exception to the long-standing American Rule, without necessitating a clear demonstration of Congressional intent. *See Alyeska*, 421 U.S. at 247. Given these compelling reasons, it is imperative that the lower court's decision to award attorney's fees be overturned.

A) Rule 41(d) does not demonstrate congressional intent to alter the American Rule because the plain meaning of "costs" does not include attorney's fees.

The Supreme Court gives the Federal Rules of Civil Procedure their plain meaning. *See Pavelic & LeFlore*, 493 U.S. at 123. Therefore, the interpretation of Rule 41(d)'s reference to "costs" begins by examining the plain meaning of "costs." *See Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010). When the Advisory Committee on Civil Rules drafted Rule 41(d), Black Law's Dictionary defined cost as "a pecuniary allowance, made to the successful party, for his expenses in prosecuting or defending a suit or a distinct proceeding within a suit." *Costs*, Black's Law Dictionary (3rd ed. 1933); *see also Bailey v. U.S.*, 516 U.S. 137, 137 (1995) (noting that the dictionary can be used to determine the plain meaning of a word). This definition highlights the fundamental difference in nature between costs and fees, explicitly stating that they are "altogether different" and that "costs do not include attorney's fees." *Costs*, Black's Law Dictionary (3rd ed. 1933). Therefore, the plain meaning of costs explicitly recognizes the inherent distinction between costs and fees, underscoring the contrast between these two types of awards and emphasizing that costs do not include attorney's fees.

Furthermore, the presence of other provisions within Rule 41 itself suggests that the drafters were aware of language that could explicitly encompass an interpretation allowing for the inclusion of attorney's fees. *See City of Chicago v. Envtl. Def. Fund*, 511 U.S. 328, 337-38 (1994) (holding that if Congress elsewhere used language that more clearly captures an interpretation urged by one of the parties, it might suggest that the disputed term should not be given that construction). For instance, Rule 41(a)(2) (emphasis added) establishes that an action may be dismissed at the plaintiff's request only by court order, on *terms* that the court considers proper. It is widely accepted that attorney's fees can be granted under this rule. *See e.g., Esquivel*, 913 F.Supp.1382 at 1389. Rule 41(a)(2) indicates that the drafters of Rule 41(d) could draft a rule that provides courts with broader discretion when dismissing a claim. *See Envt. Def. Fund*, 511 U.S. at 337-38. The use of "costs" in Rule 41(d) instead of "terms" is meaningful because when Congress uses two different terms it is assumed each is intended to have a particular meaning. *See Bailey*, 516 U.S. at 146. Thus, "terms" and "costs" should not be interpreted to have the same meaning. Moreover, several other Federal Rules directly refer to attorney's fees. For example, FRCP 30(g)(2) states that "a party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees." Fed. R. Civ. P. 30(g)(2). This further supports the argument that the drafters of Rule 41(d) were aware of alternative language that could more explicitly encompass an interpretation allowing for the award of attorney's fees. *See Envtl. Def. Fund*, 511 U.S. at 337-38. Given these considerations, it is clear that the term "costs" in Rule 41(d) should not be given the same interpretation as "attorney's fees" or "terms." The drafters of the rule were aware of alternative language that could more explicitly

address attorney's fees, and the distinct provisions within Rule 41 and other Federal Rules further support this interpretation.

Finally, it is worth noting that while the Supreme Court has granted attorney's fees under Rule 68 of the Federal Rules of Civil Procedure, the reasoning and factors considered in that decision do not lead to the same outcome when applied to Rule 41(d). *See Marek*, 473 U.S. at 9-11. This distinction arises because Rule 68 specifically relates to settlement offers, whereas Rule 41(d) pertains to dismissals. *Id.* The purpose of Rule 68 is to encourage the resolution of a lawsuit through settlement. *See id.* at 5. The American Rule provides an exception for attorney's fees when the underlying statute allows for costs also to be awarded typically at the end of a suit. *See Alyeska*, 421 U.S. at 247. Rule 68 and the traditional exception to the American Rule serve the same purpose in a way that Rule 41(d) does not. The Court reasoned that attorney's fees were awardable as costs under Rule 68 because it does not curtail plaintiffs' access to the court. *See Marek*, 473 U.S. at 10. Here, allowing attorney's fees under Rule 41(d) could curtail plaintiffs' access to the courts and significantly deter them from bringing suit if they cannot afford to pay a defendant's attorney's fees. *See id.* Thus, the reasoning in *Marek* is inapplicable to Rule 41(d) and should not be applied to demonstrate congressional intent to award attorney's fees when a plaintiff dismisses a suit. *See id.* In conclusion, the plain language of "costs" in Rule 41(d) and throughout the Rules of Civil Procedure demonstrates a lack of congressional intent to alter the American Rule by granting attorney's fees outside of its few and narrow exceptions.

Finally, it is worth noting that the Supreme Court's decision in *Marek v. Chesny*, which granted attorney's fees under Rule 68 of the Federal Rules of Civil Procedure, does not lead to the same outcome when applied to Rule 41(d) of the Rules. This distinction arises because Rule 68

specifically relates to settlement offers, while Rule 41(d) pertains to dismissals. The purpose of Rule 68 is to encourage the resolution of a lawsuit through settlement, incentivizing parties to make reasonable settlement offers. *Marek v. Chesny*, 473 U.S. at 5. The Court in *Marek* concluded that attorney's fees were awardable as costs under Rule 68 because it did not restrict plaintiffs' access to the court. *See id.* at 10. However, allowing attorney's fees under Rule 41(d) could potentially limit plaintiffs' access to the courts and discourage them from filing suits if they cannot afford to bear the burden of a defendant's attorney's fees. *See id.* Thus, the reasoning applied in *Marek* is not applicable to Rule 41(d) and should not be relied upon to establish congressional intent to award attorney's fees when a plaintiff dismisses a lawsuit. *See id.*

B) Granting attorney's fees under Rule 41(d) would alter the American Rule without a demonstration of Congressional intent.

The purpose of Rule 41(d) is "to deter forum shopping and vexatious litigation." *Rogers*, 230 F.3d at 875. Some Circuit Courts have argued that awarding attorney's fees "as part of costs" aligns with the purpose of Rule 41(d). *Esposito*, 233 F.3d at 501. However, even if it is evident that a particular interpretation of a rule would better serve its purpose, the court does not have the freedom to pursue that objective. *See Pavelic & LeFlore*, 493 U.S. at 126. It is the task of the court to "apply the text, not to improve upon it." *Id.* The current language of Rule 41(d) does not contain a provision for attorney's fees. In the case *Esquivel v. Arau*, the district court argued that Rule 41(d) serves as a codification of the bad faith exception to the American Rule. *See Esquivel*, 913 F. Supp at 1390 – 91. However, "there is no requirement of a showing of subjective bad faith either in the language of Rule 41(d) or in the relevant case law." *See id.* at 1388. Therefore, the court is unable to incorporate a "bad faith" requirement into Rule 41(d) to

enhance the fulfillment of the Rule's purpose. *Pavelic & LeFlore*, 493 U.S at 126. The court must "simply assess whether a plaintiff's conduct satisfies the requirements of Rule 41(d). *See Esquivel*, 913 F. Supp. at 1388. Here, the plaintiff has not acted in bad faith. Tray Sparks is trying to regain access to his land under the crunch of time. JA5. Tray withdrew Albey from her previous expert designation because he does not wish to engage in pointless litigation. JA23. Every day this suit continues, Tray is losing time and money to develop his ranch. JA5. His situation does not fall under any of the exceptions of the American Rule, but if "costs" are interpreted to include attorney's fees it will become a new exception under the guise of furthering the purpose of Rule 41(d). This will curtail the access that many Americans have to the justice system as they will may have to pay for the other parties attorney's fees anytime they need to refile a claim. In conclusion, Rule 41(d) does not allow for attorney fees. A court's grant of attorney fees under Rule 41(d) amounts to creating an exception to American rule without congress's clear intent to do so.

BRIEF CONCLUSION

Because of the lack of Congressional intent to award attorney's fees under Rule 41(d), the district court's judgment and order dismissing this case with prejudice should be reversed, and the case remanded for trial.

Date: March 21, 2022

Attorneys for Appellant Tray Sparks

Applicant Details

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Applicant Education

BA/BS From	Fordham University
Date of BA/BS	May 2020
JD/LLB From	Harvard Law School
	https://hls.harvard.edu/dept/ocs/
Date of JD/LLB	May 23, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Harvard Civil Rights-Civil Liberties Law Review
Moot Court Experience	Yes
Moot Court Name(s)	Upper Level Ames Moot Court Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
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June 12, 2023

Dear Judge Walker,

I am writing to apply for a clerkship in your chambers for the 2024-2025 term. I am entering my third year at Harvard Law School and am an Executive Managing Editor of the *Harvard Civil Rights-Civil Liberties Law Review*.

My professional experiences in legal and non-legal settings have helped me build skills to succeed as your clerk and assist you in your work. I am comfortable working on small teams and have an eye for detail. I follow through on projects from beginning to end and consistently produce thorough and thoughtful work. I can dig deeply into new subjects and issue areas and write about them clearly, which I believe can productively support you and your chambers.

Enclosed are my resume, law school transcript, undergraduate transcript, and writing samples. You will also receive letters of recommendation from the following individuals:

- Richard Clary, Lecturer on Law, rclary@law.harvard.edu
- Professor Maureen (Molly) Brady, mbrady@law.harvard.edu
- Adam Hansen, adam@apollo-law.com

Thank you very much for your time and consideration.

Sincerely,

Julia Hammond

JULIA HAMMOND

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EDUCATION**Harvard Law School**, Cambridge, MA*J.D. Candidate*

May 2024

Honors: Dean's Scholar Prize in Evidence
Dean's Scholar Prize in Advanced Written Advocacy

Activities: *Harvard Civil Rights-Civil Liberties Law Review*; Executive Managing Editor for Student Writing
Harvard Immigration and Refugee Clinic; Student Attorney
Professors Jon Hanson and Ryan Doerfler; Research Assistant
Harvard Women's Law Association; 1L/LLM/SJD Committee Chair

Writing Project: Studying the history and impact of restrictive zoning regulations in Connecticut

Fordham University, Bronx, NY*B.A. summa cum laude in Philosophy, Politics, and Economics*

May 2020

Minors in History and Spanish Language and Literature

Honors: *In cursu honorum* (successful completion of the Fordham College at Rose Hill Honors Program)
Phi Beta Kappa, Phi Kappa Phi
Fordham Scholarship (full-tuition merit scholarship), Honors Summer Research Grant

Thesis: *"Sanctuary Policy" in the United States: Community-Based Resistance*

Study Abroad: Universidad de Granada, Granada, Spain, Spring 2019 (full course load taught in Spanish)

Activities: Mock Trial: Vice President, Team Captain, Tournament Coordinator, Competitor
Fordham University Majors and Curricula Committee: Student Representative
Women's Club Lacrosse: Captain/Coach, Athlete

EXPERIENCE**Skadden, Arps, Slate, Meagher, & Flom LLP**, New York, NY

Summer 2023

Summer Associate. Researched issues relating to several intellectual property and general litigation matters. Assisted in creating quarterly presentation on developments in intellectual property law. Observed simulated jury presentation in preparation for trial and provided feedback to partners regarding strengths and weaknesses of case.

Apollo Law, Minneapolis, MN (Remote)

Summer 2022

Law Clerk. Drafted brief in opposition to petition for interlocutory review in the Fourth Circuit; petitioners were denied review. Collaborated with another clerk to draft motion for class certification in a civil rights action. Assisted in drafting opening brief for an Eighth Circuit appeal. Conducted legal research and document review.

Stack Sports, Plano, TX (Remote)

Spring-Summer 2021

Legal Intern. Drafted and edited licensing agreements with the guidance of in-house counsel. Conducted legal research.

Billy Freeland For City Council, New York, NY

Fall 2020-Summer 2021

Policy Intern. Researched and drafted a wide range of detailed issue platforms, including copywriting and public rollout. Examples include affordable housing, sustainable transit, and climate change mitigation. Prepared the candidate for debates, conducted outreach with stakeholders, produced promotional graphics to streamline communication of complex concepts and data sets.

"Why is Newtown So White?" Newtown, CT

Fall 2020-Summer 2021

Volunteer Research Assistant. Researched restrictive zoning and discriminatory housing policies for a project studying race and class segregation in CT.

Lenox Hill Neighborhood House, New York, NY

Fall 2019

Legal Advocacy Intern. Engaged in extended direct contact with clients. Assisted clients in securing financial support for prescription medication needs.

Connecticut Women's Education and Legal Fund, Hartford, CT

Summer 2018

Intern. Wrote articles about current issues and state policy, focusing on issues affecting women and girls, for the organization's blog and newsletter. Developed social media presence.

OTHER EXPERIENCE, SKILLS, INTERESTS

One year service experience at fast-paced restaurant with craft cocktail bar. Avid photographer, operating small photography business since 2015. Enjoys hiking, running, and exploring new cities on foot.

Harvard Law School

Date of Issue: June 8, 2023

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Record of: Julia Hammond

Current Program Status: JD Candidate

Pro Bono Requirement Complete

JD Program				2079	Evidence	H*	2
Fall 2021 Term: September 01 - December 03					Murray, Peter		
					* Dean's Scholar Prize		
1000	Civil Procedure 2	H	4	8020	Harvard Immigration and Refugee Clinic	H	4
	Greiner, D. James				Ardalan, Sabrineh		
1001	Contracts 2	H	4	2115	Immigration and Refugee Advocacy	H	2
	Kennedy, Randall				Ardalan, Sabrineh		
1006	First Year Legal Research and Writing 2B	P	2		Fall 2022 Total Credits:		14
	Millat, Caitlin						
1003	Legislation and Regulation 2	H	4		Fall-Spring 2022 Term: September 01 - May 31		
	Freeman, Jody			7002W	Independent Writing	EXT	0
1004	Property 2	P	4		Brady, Maureen		
	Mann, Bruce			3500	Writing Group: Property, Land Use, and Local Government	CR	1
	Fall 2021 Total Credits:		18		Brady, Maureen		
					Fall-Spring 2022 Total Credits:		1
Winter 2022 Term: January 04 - January 21							
1052	Lawyering for Justice in the United States	CR	2		Winter 2023 Term: January 01 - January 31		
	Gregory, Michael			2249	Trial Advocacy Workshop	CR	3
	Winter 2022 Total Credits:		2		Sullivan, Ronald		
					Winter 2023 Total Credits:		3
Spring 2022 Term: February 01 - May 13							
2519	American Legal History: From Reconstruction to the Present	P	3		Spring 2023 Term: February 01 - May 31		
	Weinrib, Laura			2000	Administrative Law	P	4
1024	Constitutional Law 2	P	4		Vermeule, Adrian		
	Jackson, Vicki			2651	Civil Rights Litigation	P	3
1002	Criminal Law 2	P	4		Michelman, Scott		
	Lanni, Adriaan			3107	Critical Corporate Theory Lab	H	2
1006	First Year Legal Research and Writing 2B	H	2		Hanson, Jon		
	Millat, Caitlin			3213	The Law of Presidential Elections	P	2
1005	Torts 2	H	4		Schwartzl, Larry		
	Davis, Seth				Spring 2023 Total Credits:		11
	Spring 2022 Total Credits:		17		Total 2022-2023 Credits:		29
	Total 2021-2022 Credits:		37				
Fall 2022 Term: September 01 - December 31					Fall 2023 Term: August 30 - December 15		
3187	Advanced Written Advocacy	H*	2	2035	Constitutional Law: First Amendment	~	4
	Clary, Richard				Weinrib, Laura		
	* Dean's Scholar Prize			2050	Criminal Procedure: Investigations	~	4
					Colgan, Beth		
2048	Corporations A	P	4	2630	Law and Political Economy?	~	2
	Spamann, Holger				Kennedy, David		
				2370	Legal History: English Legal History	~	3
					Donahue, Charles		
					continued on next page		

continued on next page

Harvard Law School

Record of: Julia Hammond

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		Fall 2023 Total Credits:	13
		Spring 2024 Term: January 22 - May 10	
2086	Federal Courts and the Federal System Fallon, Richard	~	5
2169	Legal Profession: Understanding the Plaintiff's Attorney Rubenstein, William	~	3
		Spring 2024 Total Credits:	8
		Total 2023-2024 Credits:	21
		Total JD Program Credits:	87
End of official record			

HARVARD LAW SCHOOL
Office of the Registrar
1585 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-4612
www.law.harvard.edu
registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

~~~~~  
**In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.**  
~~~~~

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the Handbook of Academic Policies or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

<u>1969 to June 1998</u>	<u>General Average</u>
<i>Summa cum laude</i>	7.20 and above
<i>Magna cum laude</i>	5.80 to 7.199
<i>Cum laude</i>	4.85 to 5.799

June 1999 to May 2010

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).



FORDHAM UNIVERSITY
THE JESUIT UNIVERSITY OF NEW YORK

Lincoln Center Campus
113 West 60th Street
New York, NY 10023
718-817-1000

Rose Hill Campus
441 East Fordham Road
Bronx, NY 10458
718-817-1000

Westchester Campus
400 Westchester Avenue
West Harrison, NY 10604
718-817-1000

Name: Julia Hammond

Student ID: A14366613 DOB: 06-APR SSN: *** - ** - ****

Previous Institution(s):
FORDHAM UNIVERSITY Sep 2016 - May 2019

COURSE #	COURSE TITLE	CRED	GRD	PTS	COURSE #	COURSE TITLE	CRED	GRD	PTS
Course Level: Undergraduate High School: VALLEY REGIONAL HIGH SCHOOL 15-JUN-2016 Current Program Bachelor of Arts College : Fordham College/Rose Hill Major : Individualized Minor : Spanish History					Institution Information Continued: HPRH 1003 ANCIENT HISTORY AND ART 3.000 A 12.000 MATH 1206 CALCULUS I 4.000 A 16.000 SPAN 1501 INTERMEDIATE SPANISH I 3.000 A 12.000 ZZRU ADVI FRESHMAN ADVISING 0.000 P .000 Ehrs: 16.000 QPts: 62.020 GPA-Hrs: 16.000 GPA: 3.876				
Comments: Individualized Major:Philosophy,Politics&Economics Degree Awarded Bachelor of Arts 16-MAY-2020 Primary Degree College : Fordham College/Rose Hill Major : Individualized Minor : Spanish History Inst. Honors: summa cum laude in cursu honorum					Spring 2017 CLASS RANK IS 40 / 998 Fordham College/Rose Hill Undeclared HPRH 1051 MEDIEVAL LITERATURE AND ART 3.000 A 12.000 HPRH 1052 MEDIEVAL PHIL/THEOL 3.000 A 12.000 HPRH 1053 MEDIEVAL HISTORY 3.000 A- 11.010 MUSC 1301 JAZZ ORCHESTRA 1.000 P .000 POSC 1100 INTRO TO POLITICS 3.000 A 12.000 SPAN 1502 INTERMEDIATE SPANISH II 3.000 A 12.000 SYMP 0003 PRE-LAW SYMPOSIUM 1.000 P .000 ZZRU ADVI FRESHMAN ADVISING 0.000 P .000 Ehrs: 17.000 QPts: 59.010 GPA-Hrs: 15.000 GPA: 3.934				
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION: Spring 2017 ADVANCED PLACEMENT PHYS 1206 PHYSICS OF EVERYDAY LIFE 3.000 TR TRNF 9999 US HISTORY 3.000 TR TRNF 9999 ENGLISH LANG AND COMP 3.000 TR TRNF 9999 ENGLISH LIT AND COMP 3.000 TR Ehrs: 12.000 QPts: 0.000 GPA-Hrs: 0.000 GPA: 0.000					Dean's List Fall 2017 Fordham College/Rose Hill Undeclared HPRH 2001 EARLY MODERN LITERATURE/ART 3.000 A 12.000 HPRH 2002 EARLY MODERN PHIL/THEOL 3.000 A 12.000 HPRH 2003 EARLY MODERN HISTORY/MUSIC 3.000 A 12.000 POSC 3313 POLITICAL PSYCHOLOGY 4.000 A 16.000 SPAN 2001 SPANISH LANG & LITERATURE 3.000 A 12.000 SYMP 0010 WEST WING ILC 1.000 P .000 ZZRU ADV2 SOPHOMORE ADVISING 0.000 S .000 Ehrs: 17.000 QPts: 64.000 GPA-Hrs: 16.000 GPA: 4.000				
SUMMER 2018 YALE UNIVERSITY ECON 4999 GAME THEORY 4.000 TB+ Ehrs: 4.000 QPts: 0.000 GPA-Hrs: 0.000 GPA: 0.000					Spring 2018 CLASS RANK IS 21 / 926 Fordham College/Rose Hill Intl Political Economy ECON 1100 BASIC MACROECONOMICS 3.000 A 12.000 HPRH 2051 CONTEMPORARY LIT/MUSIC 3.000 A- 11.010 HPRH 2052 CONTEMP SOC/POL THOUGHT 3.000 A 12.000 HPRH 2053 CONTEMPORARY HISTORY AND ART 3.000 A 12.000 HPRH 4999 ASSESSING A NYC NGO 1.000 P .000 POSC 3915 INTERNATIONAL POL ECON 4.000 A 16.000 SYMP 0010 WEST WING ILC 1.000 P .000 Ehrs: 18.000 QPts: 63.010 GPA-Hrs: 16.000 GPA: 3.938				
SPRING 2019 UNIVERSIDAD DE GRANADA TRNF 9999 CURRENT SOCIO-POL TOPIC SPAIN 3.000 TA TRNF 9999 HEALTH SCI PUBLIC HEALTH SPAIN 3.000 TA TRNF 9999 SPANISH GRAMMAR-UPPR ADVND 3.000 TA- TRNF 9999 SPAN CIVILIZATION & CULTURE 3.000 TA Ehrs: 12.000 QPts: 0.000 GPA-Hrs: 0.000 GPA: 0.000					Dean's List Summer 2018 Fordham College/Rose Hill Intl Political Economy ***** CONTINUED ON PAGE 2 *****				
INSTITUTION CREDIT: Fall 2016 Fordham College/Rose Hill Undeclared HPRH 1001 ANCIENT LITERATURE 3.000 A- 11.010 HPRH 1002 ANCIENT PHILOSOPHY 3.000 A- 11.010 ***** CONTINUED ON NEXT COLUMN *****									

JULIA HAMMOND

Anna Ponterosso

Anna Ponterosso
University Registrar
Director of Academic Records

Not considered official without Seal or Registrar's Signature
Course instruction at Fordham University is conducted in English with the exception of foreign language courses.

Date Issued: 23-MAY-2023 Page:1

**FORDHAM UNIVERSITY
EXPLANATION OF TRANSCRIPT**

Coursework taken at Fordham University commencing with the Fall 1989 term is shown on this transcript (except MC and LT). Students with coursework completed prior to Fall 1989 have a second transcript of their academic record for the earlier period, which does not include the previous grade point average. Credits earned prior to Fall 1989 are reflected in initial statistics.

UNDERGRADUATE RECORDS:

Beginning with the Fall 1989 term, the undergraduate schools CB (Gabelli School of Business, formerly known as the College of Business Administration), CL (Fordham College at Lincoln Center), FC (Fordham College at Rose Hill), and PC (Fordham School of Professional and Continuing Studies; formerly known as LS-Fordham College of Liberal Studies, IC-Ignatius College, SG-School of General Studies) have adopted the following grading system. In July 2002, Marymount College merged with Fordham University. The undergraduate schools of Marymount College were renamed Marymount College of Fordham University (MC) (formerly known as the Women's College) and Liberal Studies at Tarrytown (LT) (formerly known as Weekend College). Coursework commencing with the Fall 2002 term is shown on this transcript. Students with coursework completed prior to Fall 2002 have a second transcript of their academic record for the earlier period. Credits earned prior to Fall 2002 are reflected in initial statistics. The schools MC and LT adopted the same grading system listed below.

<i>*Fall 2009 & after</i>		<i>*Fall 1989 - Fall 2009</i>		<u>Approximate Percent</u> (The use of approximate percent is at the discretion of the instructor)
<u>Grade</u>	<u>Quality Points</u>	<u>Grade</u>	<u>Quality Points</u>	
A	4.00	A	4.0	93-100
A-	3.67	A-	3.7	90-92
B+	3.33	B+	3.3	87-89
B	3.00	B	3.0	83-86
B-	2.67	B-	2.7	80-82
C+	2.33	C+	2.3	77-79
C	2.00	C	2.0	73-76
C-	1.67	C-	1.7	70-72
D	1.00	D	1.0	60-69
F	0.00	F	0.0	Failure
AF	0.00	AF	0.0	Excessive Absence Failure (PC only)
WF	0.00	WF	0.0	Withdrawal Failure
P / F	0.00	P / F	0.0	Pass/Fail Option

GRADUATE RECORDS:

GA - Graduate School of Arts & Sciences

<i>*Fall 2009 & after</i>		<i>*Prior to Fall 1994</i>	
<u>Grade</u>	<u>Quality Points</u>	<u>Grade</u>	<u>Quality Points</u>
A	4.00	A	4.0
A-	3.75	B+	3.5
B+	3.50	B	3.0
B	3.00	C	2.0
B-	2.75	F	0.0 Failure
C	2.00		
F	0.00 Failure		
FCE / FCP	0.00 Failed Comprehensive exam/Capstone		
PCE / PCP	0.00 Passed Comprehensive exam/Capstone		
HPCE / HPCP	0.00 High Pass Comprehensive exam/Capstone		
HDCE	0.00 High Pass with Distinction Comprehensive exam		
PREP	0.00 Preparation for Comprehensive Exam		
AP	0.00 Adequate progress - Ph.D. only		
LP	0.00 Lack of progress - Ph.D. only		
WF	0.00 Withdrawal Failure		
PI / FI	0.00 Passing Incomplete/Failing Incomplete (temporary grade)		

GS - Graduate School of Social Service

GR - Graduate School of Religion and Religious Education

<u>Grade</u>	<u>Quality Points</u>
A	4.00
A-	3.75
B+	3.50
B	3.00
B-	2.75
C+	2.50 (GS Only)
C	2.00
F	0.00 Failure
IW	0.00 Permanent Incomplete (GS Only)
P / F	0.00 Pass/Fail Option

GE - Graduate School of Education
The programs offered by GE are approved by the National Council of Accreditation of Teacher Education.

<u>Grade</u>	<u>Quality Points</u>
A	4.00
A-	3.70
B+	3.50
B	3.00
B-	2.70
C+	2.50
C	2.00
F	0.00 Failure
P / F	0.00 Pass/Fail Option

GP - PCS Division of Graduate Studies

<i>*Prior to Fall 2018</i>	
<u>Grade</u>	<u>Quality Points</u>
A	4.00
A-	3.67
B+	3.33
B	3.00
B-	2.67
C+	2.33
C	2.00
C-	1.67
D	1.00
F	0.00 Failure
P / F	0.00 Pass/Fail Option

<i>*Fall 2018 and after</i>	
<u>Grade</u>	<u>Quality Points</u>
A	4.00
A-	3.75
B+	3.50
B	3.00
B-	2.75
C+	2.33
C	2.00
C-	1.67
D	1.00
F	0.00 Failure
P / F	0.00 Pass/Fail Option

GB - Gabelli School of Business (Graduate)

**Fall 2015 and after*

<u>Grade</u>	<u>Quality Points</u>	<u>Grade</u>	<u>Quality Points</u>
A	4.00	C+	2.33
A-	3.67	C	2.00
B+	3.33	C-	1.67
B	3.00	D	1.00
B-	2.67	F	0.00 Failure
		P / F	0.00 Pass/Fail Option

**Fall 1990 - Summer 2015*

<u>Grade</u>	<u>Quality Points</u>
A	4.00
B+	3.50
B	3.00
C	2.00
D	1.00
F	0.00 Failure

**Prior to Fall 1990*

<u>Grade</u>	<u>Quality Points</u>
H	4.00 Honors
HP	3.00 High Pass
P	2.00 Pass
MP	1.00 Marginal Pass
F	0.00 Failure

**Fall 2017 and after: COMPLT (Complete, 0.00 Quality Points)*

Grades of W (Withdrawn), ABS (Absent from Final Examination, temporary), INC (Incomplete, temporary), NGR (No Grade Reported, temporary), S (Satisfactory), U (Unsatisfactory), IP (In Progress), AUD (Audit) may be used by ALL schools. NC (Not Complete) may be used for continuing education courses only. Grades prefixed with the letter T indicate credits transferred from another institution.

The student education record disclosed on this transcript is maintained and released in accord with Public Law 93-380, Sec. 438, The Family Educational Rights and Privacy Act. The policy of Fordham University pertinent to this legislation is available from the Office of Academic Records and in the Student Handbook. As of October 5, 2015, for crimes of violence, including but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act, a notation will be placed on the transcript of students found responsible after a conduct process. It will be noted that they were 'suspended after a finding of responsibility for a code of conduct violation,' or 'expelled after a finding of responsibility for a code of conduct violation.' For a respondent who withdraws from Fordham University while conduct charges are pending and declines to complete the conduct process, a notation will be placed on the transcript that the student 'withdrew with conduct charges pending.' For more information, see the Policy on Transcript Notations and Appeals in the University Regulations section of the Student Handbook.

AR June 2022



FORDHAM UNIVERSITY
THE JESUIT UNIVERSITY OF NEW YORK

Lincoln Center Campus
113 West 60th Street
New York, NY 10023
718-817-1000

Rose Hill Campus
441 East Fordham Road
Bronx, NY 10458
718-817-1000

Westchester Campus
400 Westchester Avenue
West Harrison, NY 10604
718-817-1000

Name: Julia Hammond

Student ID: A14366613 DOB: 06-APR SSN: *** - ** - ****

Previous Institution(s):

FORDHAM UNIVERSITY Sep 2016 - May 2019

COURSE #	COURSE TITLE	CRED	GRD	PTS	COURSE #	COURSE TITLE	CRED	GRD	PTS
ECON 1200	BASIC MICROECONOMICS	3.000	A	12.000	***** TRANSCRIPT TOTALS *****				
	Ehrs:	3.000	Qpts:	12.000	INSTITUTION Ehrs: 127.000 Qpts: 464.040				
	GPA-Hrs:	3.000	GPA:	4.000	GPA-Hrs: 117.000 GPA: 3.966				
Fall 2018					TRANSFER Ehrs: 28.000 Qpts: 0.000				
Fordham College/Rose Hill					GPA-Hrs: 0.000 GPA: 0.000				
Intl Political Economy					OVERALL Ehrs: 155.000 Qpts: 464.040				
ECON 2140	STATISTICS I	4.000	A	16.000	GPA-Hrs: 117.000 GPA: 3.966				
HPRH 3001	RELIGION IN THE MODERN WORLD	4.000	A	16.000	***** END OF TRANSCRIPT *****				
POSC 3209	CONSTITUTIONAL LAW	4.000	A	16.000					
PSYC 1100	BIOPSYCHOLOGY	3.000	A	12.000					
SPAN 2500	APPROACHES TO LITERATURE	4.000	A	16.000					
	Ehrs:	19.000	Qpts:	76.000					
	GPA-Hrs:	19.000	GPA:	4.000					
Dean's List									
Spring 2019									
Fordham College/Rose Hill									
Individualized									
SPAN 4520	SPAIN IN CONTEXT	4.000	A	16.000					
ZZSA 9178	ADMINISTRATIVE STUDY ABROAD	0.000	-	.000					
	Ehrs:	4.000	Qpts:	16.000					
	GPA-Hrs:	4.000	GPA:	4.000					
Fall 2019									
Fordham College/Rose Hill									
Individualized									
ECON 3453	Law and Economics	4.000	A	16.000					
POSC 3616	Political Economy of Poverty	4.000	A	16.000					
SOCI 3456	Modern Amer Soc Movements	4.000	A	16.000					
SPAN 3575	Painting the Empire	4.000	A	16.000					
	Ehrs:	16.000	Qpts:	64.000					
	GPA-Hrs:	16.000	GPA:	4.000					
Spring 2020									
Fordham College/Rose Hill									
Individualized									
HIST 4772	Sem: Colonial Latin America	4.000	P	.000					
HPRH 3051	Eth Dim Contemp Soc Prob	4.000	A	16.000					
HPRH 4001	Senior Thesis	4.000	A	16.000					
PHIL 3422	Harry Potter and Philosophy	4.000	A	16.000					
SYMP 2600	FCRH Discernment Seminar	1.000	P	.000					
	Ehrs:	17.000	Qpts:	48.000					
	GPA-Hrs:	12.000	GPA:	4.000					
Dean's List									
***** CONTINUED ON NEXT COLUMN *****									

Anna Ponterosso

Anna Ponterosso
University Registrar
Director of Academic Records

Not considered official without Seal or Registrar's Signature
Course instruction at Fordham University is conducted in English with the exception of foreign language courses.

Date Issued: 23-MAY-2023

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FORDHAM UNIVERSITY
EXPLANATION OF TRANSCRIPT

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UNDERGRADUATE RECORDS:

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<i>*Fall 2009 & after</i>		<i>*Fall 1989 - Fall 2009</i>		<u>Approximate Percent</u> (The use of approximate percent is at the discretion of the instructor)
<u>Grade</u>	<u>Quality Points</u>	<u>Grade</u>	<u>Quality Points</u>	
A	4.00	A	4.0	93-100
A-	3.67	A-	3.7	90-92
B+	3.33	B+	3.3	87-89
B	3.00	B	3.0	83-86
B-	2.67	B-	2.7	80-82
C+	2.33	C+	2.3	77-79
C	2.00	C	2.0	73-76
C-	1.67	C-	1.7	70-72
D	1.00	D	1.0	60-69
F	0.00	F	0.0	Failure
AF	0.00	AF	0.0	Excessive Absence Failure (PC only)
WF	0.00	WF	0.0	Withdrawal Failure
P / F	0.00	P / F	0.0	Pass/Fail Option

GRADUATE RECORDS:

GA - Graduate School of Arts & Sciences

<i>*Fall 2009 & after</i>		<i>*Prior to Fall 1994</i>	
<u>Grade</u>	<u>Quality Points</u>	<u>Grade</u>	<u>Quality Points</u>
A	4.00	A	4.0
A-	3.75	B+	3.5
B+	3.50	B	3.0
B	3.00	C	2.0
B-	2.75	F	0.0 Failure
C	2.00		
F	0.00 Failure		
FCE / FCP	0.00 Failed Comprehensive exam/Capstone		
PCE / PCP	0.00 Passed Comprehensive exam/Capstone		
HPCE / HPCP	0.00 High Pass Comprehensive exam/Capstone		
HDCE	0.00 High Pass with Distinction Comprehensive exam		
PREP	0.00 Preparation for Comprehensive Exam		
AP	0.00 Adequate progress - Ph.D. only		
LP	0.00 Lack of progress - Ph.D. only		
WF	0.00 Withdrawal Failure		
PI / FI	0.00 Passing Incomplete/Failing Incomplete (temporary grade)		

GS - Graduate School of Social Service

GR - Graduate School of Religion and Religious Education

<u>Grade</u>	<u>Quality Points</u>
A	4.00
A-	3.75
B+	3.50
B	3.00
B-	2.75
C+	2.50 (GS Only)
C	2.00
F	0.00 Failure
IW	0.00 Permanent Incomplete (GS Only)
P / F	0.00 Pass/Fail Option

GE - Graduate School of Education
The programs offered by GE are approved by the National Council of Accreditation of Teacher Education.

<u>Grade</u>	<u>Quality Points</u>
A	4.00
A-	3.70
B+	3.50
B	3.00
B-	2.70
C+	2.50
C	2.00
F	0.00 Failure
P / F	0.00 Pass/Fail Option

GP - PCS Division of Graduate Studies

<i>*Prior to Fall 2018</i>	
<u>Grade</u>	<u>Quality Points</u>
A	4.00
A-	3.67
B+	3.33
B	3.00
B-	2.67
C+	2.33
C	2.00
C-	1.67
D	1.00
F	0.00 Failure
P / F	0.00 Pass/Fail Option

<i>*Fall 2018 and after</i>	
<u>Grade</u>	<u>Quality Points</u>
A	4.00
A-	3.75
B+	3.50
B	3.00
B-	2.75
C+	2.33
C	2.00
C-	1.67
D	1.00
F	0.00 Failure
P / F	0.00 Pass/Fail Option

GB - Gabelli School of Business (Graduate)

**Fall 2015 and after*

<u>Grade</u>	<u>Quality Points</u>	<u>Grade</u>	<u>Quality Points</u>
A	4.00	C+	2.33
A-	3.67	C	2.00
B+	3.33	C-	1.67
B	3.00	D	1.00
B-	2.67	F	0.00 Failure
		P / F	0.00 Pass/Fail Option

**Fall 1990 - Summer 2015*

<u>Grade</u>	<u>Quality Points</u>
A	4.00
B+	3.50
B	3.00
C	2.00
D	1.00
F	0.00 Failure

**Prior to Fall 1990*

<u>Grade</u>	<u>Quality Points</u>
H	4.00 Honors
HP	3.00 High Pass
P	2.00 Pass
MP	1.00 Marginal Pass
F	0.00 Failure

**Fall 2017 and after: COMPLT (Complete, 0.00 Quality Points)*

Grades of W (Withdrawn), ABS (Absent from Final Examination, temporary), INC (Incomplete, temporary), NGR (No Grade Reported, temporary), S (Satisfactory), U (Unsatisfactory), IP (In Progress), AUD (Audit) may be used by ALL schools. NC (Not Complete) may be used for continuing education courses only. Grades prefixed with the letter T indicate credits transferred from another institution.

The student education record disclosed on this transcript is maintained and released in accord with Public Law 93-380, Sec. 438, The Family Educational Rights and Privacy Act. The policy of Fordham University pertinent to this legislation is available from the Office of Academic Records and in the Student Handbook. As of October 5, 2015, for crimes of violence, including but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act, a notation will be placed on the transcript of students found responsible after a conduct process. It will be noted that they were 'suspended after a finding of responsibility for a code of conduct violation,' or 'expelled after a finding of responsibility for a code of conduct violation.' For a respondent who withdraws from Fordham University while conduct charges are pending and declines to complete the conduct process, a notation will be placed on the transcript that the student 'withdrew with conduct charges pending.' For more information, see the Policy on Transcript Notations and Appeals in the University Regulations section of the Student Handbook.

AR June 2022

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write this letter of recommendation on behalf of Julia Hammond (Harvard Law School 2024), who is applying for a clerkship for the 2024-2025 Term.

Julia took my course on Advanced Written Advocacy this past Fall. The course is a 20-student seminar focused on effective written advocacy at the federal district court level. Using publicly filed submissions from a variety of cases at different stages of litigation (motions to dismiss, discovery briefs and letter briefs, summary judgment briefs and supporting papers, preliminary injunction filings, and pre-trial in limine briefs), the students analyzed what is effective, what is not effective, and what is affirmatively harmful. Each student had to do four written assignments: editing a 30-page draft motion to dismiss brief down to 25 pages; drafting a preliminary statement for a motion to dismiss reply brief; writing a 10-page reply brief on a personal jurisdiction motion; and writing responses to a three-part in limine motion. Each writing assignment was separately graded, as was class participation.

Julia was a standout in the course. Each of her writing assignments was among the very best in the class, and she was an active and engaged participant in class discussion every week. Julia's writing was comprehensive and well organized, easy to follow and easy to edit. She successfully incorporated my comments into each subsequent assignment. She understood the need to keep the submissions clear and direct, and she was able to spot the strengths and the flaws in each week's examples. She won the Dean's Scholar prize for the course.

Julia made effective use of office hours to discuss her writing and to explore the underlying legal issues addressed in the various publicly filed briefs. She is eager to learn about the law and legal practice. Julia is smart, articulate, personable and has a keen interest in becoming an effective litigator.

I believe that Julia would be a thoughtful, hardworking and effective law clerk. Her work product is first class. She is creative and pays close attention to detail. Her easy-going manner would make her an effective team player inside chambers.

Thank you for considering this submission.

Respectfully,

Richard W. Clary
Lecturer on Law, Harvard Law School

Richard Clary - rclary@law.harvard.edu



Adam W. Hansen
333 Washington Avenue
North
Suite 300
Minneapolis, MN 55401
Direct: (612) 927-2969
adam@apollo-law.com

June 11, 2023

Dear Judge,

I write to you to recommend Julia Hammond for a judicial clerkship.

I hired Julia to work as a law clerk at my firm, Apollo Law, during the 2022 summer. A brief word about me: I founded Apollo Law in 2016 to focus on representing employees and consumers in the United States Court of Appeals and Supreme Court. Through our work, we aim to vindicate the rights of our clients while improving the legal landscape for workers and individuals everywhere. More information about the firm can be found at <https://www.apollo-law.com/>.

Every year we receive an outsize number of applications for a limited number of law clerk positions. Julia stood out to me right away. She carried herself in a professional yet easygoing manner. Her innate curiosity about the law—among many other topics—was obvious.

My decision to hire Julia was rewarded immediately. Throughout her tenure, she exhibited an incredible ability in writing. Although she excels in all areas, Julia's got a particular knack for distilling complex legal principles from a wide range of legal sources. In her writing, she favors clear, accessible prose—without sacrificing sophistication or nuance. Her writing has always struck me as, for lack of a better phrase, "beyond her years." Julia has also shown a remarkable capacity to adapt and learn. She processes complex feedback with little effort and demonstrates a strong commitment to improve and grow in her craft.

Julia made excellent contributions on a wide range of work over the summer. I always make a point to give each law clerk one big assignment that they can work on continuously over the course of their three-month tenure. Julia took on a Fourth Circuit appeal raising complex questions about appellate jurisdiction and collective-action certification under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* On appeal, our brief necessarily examined a wide range of intersecting legal sources, including statutes, regulations, and legislative history. Julia was totally up to the challenge. She worked carefully but efficiently, delivering exemplary work product at every stage of the drafting process. She incorporated outside feedback as needed, but generally required almost no oversight. Julia worked on a variety of additional projects last summer—including a complex class-certification motion in a pro-bono civil-rights case alleging that law enforcement agencies engaged in an

unconstitutional policy of targeting journalists in Minneapolis following the murder of George Floyd. She brought the same singular workmanship to these projects as well.

Although writing is certainly the central focus of our firm—as well as a law clerk’s role at the firm—Julia excelled in other areas as well. Julia regularly participated in conference calls with co-counsel and internal strategy sessions. Her contributions reflected the same thoughtfulness and care evident in her writing.

Complimenting her abilities, Julia’s character and personality will make her a natural fit in chambers. Julia is friendly, easygoing, and professional. She’s shown the rare ability to approach legal problems with the seriousness they deserve without taking herself too seriously in the process. Over the course of last summer Julia made herself a positive and energetic addition to the firm.

Julia is a blue-chip legal thinker, a strong writer, a hard worker, and a consummate professional. I wholeheartedly recommend her as a prospective judicial law clerk well suited to contribute to the Court. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Adam Hansen". The signature is fluid and cursive, with the first name "Adam" and last name "Hansen" clearly distinguishable.

Adam W. Hansen

May 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to support Julia Hammond's application for a clerkship in your chambers. Julia is a member of the Class of 2024 at Harvard Law School. She is engaged, kind, and hardworking, and I have no doubts that she would make a terrific clerk.

Julia was a student in my writing group on Property, Land Use, and Local Government Law during the 2022-23 academic year. In that capacity, I supervised her in an ongoing independent research project and met with her and a group of her peers frequently to workshop ideas and sections of drafts. Before I talk specifically about her writing, I will just say that Julia was an invaluable participant in our group. Even in delivering critical feedback, she was always warm and professional, and she showed up at every session eager to learn and engage with other students' work. I am extraordinarily appreciative of her efforts.

For her paper, Julia is writing about the history of restrictive zoning in Connecticut, a topic about which she has some prior knowledge (having both grown up in that state and also having worked as a research assistant on land use issues in past jobs). She plans to finish the paper in the winter of her third year, but it is shaping up to be excellent. Julia is exploring the timeline on which different Connecticut municipalities (chiefly West Hartford and Woodbridge) adopted zoning ordinances, comparing the content of these early laws, and examining the path dependence of zoning patterns in these municipalities even a hundred years after the initial rules were made. She has done extensive historical research into newspaper archives, law journal articles, and both early and modern case law. In the drafts and draft sections that I have read, I have been impressed with both Julia's writing ability and her research prowess, even in unfamiliar source material. When we meet to discuss her project, Julia's standards for herself have honestly proven higher than my own. She aspires to publish the results, and she is exploring fascinating questions about class, race, and sprawl in her ongoing research. I look forward to seeing the project come to fruition.

In her time so far, Julia has done well at HLS, boasting numerous Honors grades and even Dean's Scholar prizes (reserved for just a handful of students in any given class). She has also thrown herself into research assistantships, clinical work, and leadership roles in multiple student organizations (including the *Civil Rights-Civil Liberties Law Review* and the American Constitution Society). I know that in the short term, Julia hopes to become a litigator, and a clerkship would of course be an excellent start on that path. She has grown substantially as a writer during her time with us, and she has genuinely loved law school. I know that she would be equally enthusiastic about the opportunity to learn the craft of judicial writing and to be of assistance in any capacity.

In short, I am pleased to recommend Julia to you. She has a terrific work ethic, she is a talented and careful writer, and her attention to detail stands out even among my many talented students. Please do not hesitate to call or e-mail if I can give you any further information.

Sincerely,

Maureen E. Brady

Molly Brady - mbrady@law.harvard.edu - (617) 384-0099

JULIA HAMMOND

236 Concord Ave., Cambridge, MA, 02138 • (860) 395-7663 •
jhammond@jd24.law.harvard.edu

Writing Sample

This is an excerpt of a brief filed in the U.S. Court of Appeals for the Fourth Circuit in opposition to a petition for interlocutory review. Petitioners sought review of the district court's conditional certification of an employee collective under the Fair Labor Standards Act.

I drafted the brief as part of my summer internship with Apollo Law, LLC. Prior to filing, my supervisor, Adam Hansen, reviewed the draft and provided comments and light edits, which I incorporated. He gave me permission and encouragement to use it as a writing sample reflecting my work.

INTRODUCTION

The question Maximus seeks to present to this Court—“what legal standard” courts should apply “when deciding whether to certify a collective action under the Fair Labor Standards Act”—meets none of the requirements for interlocutory review under 29 U.S.C. § 1292(b). This Court should deny Maximus’ petition.

Interlocutory appeals are “an extraordinary remedy.” *Fannin v. CSX Transp., Inc.*, No. 88-8120, 1989 WL 42583, at *2 (4th Cir. Apr. 26, 1989) (per curiam). They mark “a rare exception to the final judgment rule,” *Koehler v. Bank of Bermuda, Ltd.*, 101 F.3d 863, 865 (2nd Cir. 1996)—a rule that “preserves the proper balance between trial and appellate courts, minimizes the harassment and delay that [result] from repeated interlocutory appeals, and promotes the efficient administration of justice.” *Microsoft Corp. v. Baker*, 137 S.Ct. 1702, 1712 (2017). Interlocutory review “should be used sparingly.” *Myles v. Laffitte*, 881 F.2d 125, 127 (4th Cir. 1989).

The Supreme Court long ago established that district courts may use their case-management authority to send notice to similarly situated employees in FLSA collective actions. *Hoffman-La Roche v. Sperling*, 493 U.S. 165, 170 (1989). Since then, courts have “coalesced” around a two-step framework for managing collective actions. *Myers v. Hertz Corp.*, 624 F.3d 537, 555 (2d Cir. 2010). Where, as here, the named plaintiff makes a colorable showing that the challenged policy affects similarly situated workers, district courts “conditionally certify” a collective action and direct “notice concerning the pendency of the [case], so that [similarly situated employees] can make informed decisions about whether to participate.” *Id.*; *Hoffman-La Roche*, 493 U.S. 165 at 170. Later in the litigation, “on a fuller record,”

courts determine whether the employees “who have opted in are in fact ‘similarly situated’ to the named plaintiffs.” *Myers*, 624 F.3d at 555.

Like other matters of case management, district courts enjoy broad discretion to manage collective actions. Courts are not required to follow specific criteria when determining whether to send notice. *See Ison v. MarkWest Energy Partners, LP*, No. 3:21-0333, 2021 WL 5989084, at *3 (S.D.W. Va. Dec. 17, 2021). Courts determine the timing, content, and scope of the notice based on the facts of each case. *Id.*

That is exactly what the district court did here. Testimony from a dozen Maximus employees employed across ten different states demonstrated that Maximus maintains a company-wide policy of unlawfully withholding overtime compensation. D.E. 29–29-12. Based on that evidence, the district court concluded that it was appropriate to send notice of this lawsuit to similarly situated employees. D.E. 63 at 11, 20.

Maximus seeks review under § 1292(b), but the district court’s decision—a decision involving the quintessential exercise of case- management discretion based on the evidence presented below—manifestly fails to meet the criteria for an interlocutory appeal.

To start, how a court goes about exercising its discretion under *Hoffman-La Roche* is not a question of law. Certifying class and collective actions is “primarily a factual [task] with which a district court generally has a greater familiarity and expertise than does a court of appeals.” *Windham v. American Brands, Inc.*, 565 F.2d 59, 65 (4th Cir. 1977). It is certainly not a *controlling* question of law. Maximus has made no showing that a slightly stricter or more permissive exercise of discretion under *Hoffman-La Roche* would affect the course of this litigation. What Maximus

asks for, then, is effectively an advisory opinion. But “[t]he purpose of section 1292(b) is not to offer advisory opinions” unmoored from the actual controversy before the Court. *Paschall v. Kansas City Star Co.*, 506 F.2d 403, 406 (8th Cir. 1979).

There is also no substantial ground for difference of opinion. Courts routinely authorize notice based on the kind of evidentiary showing Respondents made below. What Maximus sees as a difference of opinion is instead a heterogeneous exercise of discretion across a wide range of cases—each with its own allegations, facts, and evidence.

Finally, an interlocutory appeal would not materially advance this litigation. To the contrary, an interlocutory appeal would be far more likely to produce delay and procedural morass than an efficient termination of this litigation.

For these reasons, this Court should deny Maximus’ petition for permission to appeal.

STATEMENT OF THE CASE

I. DISTRICT COURTS ENJOY BROAD DISCRETION TO SEND NOTICE IN FLSA COLLECTIVE ACTIONS.

The FLSA permits employees to sue for unpaid minimum wages and overtime compensation on behalf of “themselves and other employees similarly situated.” 29 U.S.C. § 216(b). Congress adopted this collective- action mechanism to minimize individual costs and “vindicate [employee] rights” through the pooling of resources. *Hoffman-La Roche*, 493 U.S. 165 at 170.¹

¹ *Hoffman-La Roche* involved claims brought under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621–34, but “the same rules govern judicial management of class actions under both” the ADEA and the FLSA. *Shaffer v. Farm Fresh, Inc.*, 966 F.2d 142, 147 n.5 (4th Cir. 1992).

Unlike absent class members in class-action cases governed by Rule 23, similarly situated employees must affirmatively opt into an FLSA case by filing written consent forms with the court. 29 U.S.C. § 216(b). Another critical difference: unlike under Rule 23, “the statute of limitations” for the claims of putative class members “continues to run” until they opt into the suit. *Houston v. URS Corp.*, 591 F. Supp. 2d 827, 831 (E.D. Va. 2008).

In *Hoffman-La Roche*, the Supreme Court affirmed “the propriety, if not the necessity,” of court intervention to monitor and facilitate the timely sending of notice to similarly situated employees. *Hoffman-La Roche*, 493 U.S. at 168, 172. The FLSA provides no hard-and-fast rules addressing when or how notice should be sent. *Halle v. W. Penn. Allegheny Health Sys. Inc.*, 842 F.3d 215, 224 (3d Cir. 2016). District courts, therefore, may make these determinations “in any manner” not inconsistent with the “federal or local rules.” *Hoffman-La Roche*, 493 U.S. at 173. *Hoffman-La Roche* nevertheless endorsed early “judicial intervention” in the interest of “better” case management. *Id.* at 171–72. In the decades following *Hoffman-La Roche*, courts have “coalesced” around a flexible two-step framework for managing collective actions. *See, e.g., Myers*, 624 F.3d at 555; *Morgan v. Family Dollar Stores Inc.*, 551 F.3d 1233, 1261 (11th Cir. 2008); *Branson v. All. Coal, LLC*, No. 4:19–CV–00155–JHM, 2021 WL 1550571, at *4 (W.D. Ky. April 20, 2021). This approach, originally articulated in *Lusardi v. Xerox Corp.*, 118 F.R.D. 351 (D.N.J. 1987), is “uniformly” used by district courts in the Fourth Circuit. *Winks v. Va. Dept. of Transp.*, No. 3:20–CV–420–HEH, 2021 WL 2482680 at *2 (E.D. Va. June 17, 2021); *Houston*, 591 F. Supp. 2d at 831.

At the first step, called “conditional certification,” courts typically require a “modest factual showing” that the named plaintiff and the putative class members “together were victims of a common policy or plan that violated the law.” *Enkhbayar Choimbol v. Fairfield Resorts, Inc.*, 475 F. Supp. 2d 557, 564 (E.D. Va. 2006). If the named plaintiff carries her burden, the court directs the parties to send a court-approved notice to similarly situated employees. *Hoffman-La Roche*, 493 U.S. at 170. The second step is more demanding. After discovery is virtually complete, an employer may move to decertify the collective. *Enkhbayar*, 475 F. Supp. 2d at 563. Armed with a “much thicker record,” courts can make a “more informed factual determination of similarity” using a more exacting review. *Morgan*, 551 F.3d at 1261 (citing *Thiessen v. Gen. Elec. Capital Corp.*, 267 F.3d 1095, 1103 (10th Cir. 2001)). At this second stage, courts define the precise scope of the collective action for trial. *Cramer v. Arkesia, Inc.*, 311 F. Supp. 3d 733, 832 (E.D. Va. 2018). At both stages, courts consider a variety of non-exhaustive factors, including “the factual and employment settings of the [potential]...plaintiffs,” “the different defenses to which the plaintiffs may be [individually] subject,” and “the degree of fairness and procedural impact of certifying the action as a collective action.” *Yerger v. Liberty Mutual Grp., Inc.*, No. 5:11–CV–238–D, 2011 WL 5593151, at *4 (E.D.N.C. Nov. 15, 2017).

This two-step framework appropriately balances the competing interests of employees, employers, and courts. It protects plaintiffs’ interest in pooling resources and vindicating their substantive rights. *See Hoffman-La Roche*, 493 U.S. at 171. If courts demanded years of discovery and massive evidentiary records to inform their notice decisions, employers would win every case by simply running

out the clock. “Because the statute of limitations continues to run on unnamed class members’ claims until they opt into the collective action,” courts must send notice—if at all—“early in [the] proceeding” to preserve “the objectives [of] a collective action.” *Houston*, 591 F. Supp. 2d at 831. The two-step framework likewise vindicates defendants’ interest in avoiding spurious notice by requiring plaintiffs to come forward with “more than mere allegations” of a common unlawful practice. *Morgan*, 551 F.3d at 1262. And, not least, the two-step approach upholds courts’ interest in efficient and effective case management through early and active intervention. *Hoffman-La Roche*, 493 U.S. at 171. Although courts have taken to calling this process “certification” and “decertification,” these terms are misnomers. “[C]ertification” is “not a true certification,” *Halle*, 842 F.3d at 224, but “only the district court’s exercise of the discretionary power, upheld in *Hoffman-LaRoche*, to facilitate the sending of notice to potential class members,” *Myers*, 624 F.3d at 555 n.10. Unlike class certification in Rule 23 actions, “conditional certification” does not create “a class with an independent legal status...or join additional parties.” *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 75 (2013). The “sole consequence of conditional certification” is “the sending of court-approved notice to employees, *id.* at 75, “so that they can make informed decisions about whether to participate, *Hoffman-La Roche*, 493 U.S. at 170.

II. THE DISTRICT COURT SENT NOTICE TO SIMILARLY SITUATED EMPLOYEES BECAUSE MAXIMUS MAINTAINS A COMPANY-WIDE POLICY OF FORCING EMPLOYEES TO WORK OFF THE CLOCK.

Respondents Sharey Thomas, Jennifer Gilvin, Laura Vick, Shannon Garner, Nyeshia Young, and Olga Ramirez filed a complaint seeking to recover unpaid overtime wages from Maximus. D.E. 1 at 1–2. Respondents maintain that Maximus

enforced a company-wide policy illegally requiring its hourly call-center employees, who answer customer phone calls and provide general customer assistance, to work off-the- clock and without pay. *Id.* at 2.

Respondents contend that Maximus requires its hourly call-center employees to boot up their computers and log into computer programs to be “call-ready” the moment their shifts begin—a process that takes up to thirty minutes per day and for which employees receive no compensation. D.E. 1 at 9. Respondents similarly allege that employees must finish ongoing calls without compensation after the end of their scheduled shifts. *Id.* at 11.² As a result, Respondents regularly work one to two hours of unpaid, off-the-clock time each workweek beyond their scheduled hours. *Id.* at 3, 8. Respondents brought their suit on behalf of themselves and similarly situated Maximus employees. D.E. 1 at 2. They also asserted state-law class claims under Rule 23. *Id.* at 1–2.

Respondents moved for conditional certification and court- authorized notice. D.E. 28. Their motion was supported by twelve detailed declarations from Maximus employees working in ten different states. D.E. 29-1–29-12. This testimony proved that Respondents, and the similarly situated employees they sought to represent, were subject to an unlawful company-wide policy of requiring unpaid, off-the-clock work. *Id.*

Before ruling on the motion, the district court convened a call with the parties, during which the court indicated that it was “highly inclined” to certify an

² Respondents contend that these same policies extend to meal breaks, which means that employees are not paid for time worked at the beginning and end of breaks. *Id.* at 10.

interlocutory appeal. D.E. 62 at 5. Counsel for Maximus asked about supplementing the record to support a potential interlocutory appeal. *Id.* at 4. The district court stated in no uncertain terms that it would not allow Maximus to do that. *Id.*

The district court granted in relevant part Respondents’ motion for conditional certification and notice, D.E. 64, finding Maximus’ “hourly customer service representatives” similarly situated in light of consistent employee declarations showing a “corporate-wide policy” resulting in uncompensated overtime. D.E. 63 at 11. The court stayed the notice until Maximus’ anticipated motion to certify this case for interlocutory appeal was resolved. *Id.* at 20.

Accepting the district court’s invitation, Maximus moved to certify the district court’s order for interlocutory appeal. D.E. 67. But that was not all. Ignoring the district court’s admonition, Maximus filed a renewed motion to enlarge the record. D.E. 66 at 1. This was not a modest request. Maximus filed *thousands of pages* of additional documents on the court’s docket. D.E. 66 at 1. Maximus’ request was not made in good faith. Maximus preferred a skinny record when it came to opposing Respondents’ motion for conditional certification. But once the district court indicated that it intended to certify this case for interlocutory review, Maximus wanted a much richer record to bolster its potential appeal. Maximus’ request was problematic for other reasons, too. The voluminous documents Maximus sought to place in the record were obviously not before the district court when it decided to authorize notice to similarly situated employees. The documents were also entirely one- sided—handpicked by Maximus without any chance for Respondents to test them in discovery or offer their own documents in response.

Unsurprisingly, the district court again denied Maximus’ motion to enlarge the record and struck the documents from the court’s docket. D.E. 87 at 2. The court noted the impropriety of Maximus’ request, questioning why the Fourth Circuit would need to “weed through” thousands of pages of additional evidence when interlocutory appeals are meant to address “clear-cut legal issue[s].” D.E. 95 at 2–3. Despite these repeated denials, Maximus has implied that it will yet again request to supplement the record before this Court if its petition for permission to appeal is granted. *See* D.E. 76 at 7.

The district court certified its order granting conditional certification and notice for interlocutory appeal. D.E. 89 at 2.

STANDARD FOR GRANTING AN INTERLOCUTORY APPEAL

This Court has discretion to permit an interlocutory appeal where the district court’s certified order (1) “involves a controlling question of law” (2) “as to which there is substantial ground for difference of opinion” and (3) “an immediate appeal from the order may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b). These requirements are analyzed strictly. *Myles*, 881 F.2d at 127. “Even when all of [the] factors are present, the court of appeals has discretion to turn down a § 1292(b) appeal.” *McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004). To grant review, this Court must find that “exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment.” *Fannin*, 1989 WL 42583, at *2 (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978)).

REASONS FOR DENYING THE PETITION

The petition does not meet any of the requirements for interlocutory review under § 1292(b). As *Hoffman-La Roche* made clear, the timing and sequence of notice in an FLSA case is a question of case management— not a controlling question of law. Nor is there any substantial ground for a difference of opinion. And addressing the issue Maximus seeks to raise would not advance, but rather delay, the ultimate resolution of this litigation.

I. THE QUESTION PRESENTED IS NOT A “CONTROLLING QUESTION OF LAW.”

The district court’s order does not present a controlling question of law.

A “question of law” is “an abstract legal issue that the court of appeals can decide quickly and cleanly,” *U.S. ex rel. Michaels v. Agape Senior Cmty., Inc.*, 848 F.3d. 330, 340 (4th Cir. 2017) (internal quotation omitted), “without the appellate court delving into the record,” *Miller v. Urchendu*, No. 13–CV–02149, 2015 WL 7709414 at *2 (W.D. Tenn. July 24, 2015). Controlling questions include those “whose resolution will be completely dispositive of the litigation, either as a legal or practical matter.” *Fannin*, 1989 WL 42583, at *5.

The timing of notice in an FLSA case is not a controlling question of law, but a fact-based question of “case management” fitting squarely within a district court’s broad discretion to manage collective actions. *See Hoffman-La Roche*, 493 U.S. at 171, 174. Therefore, the only plausible question to review at this juncture is whether the district court abused its discretion in ordering notice. *See Shaffer*, 966 F.2d at 147.

A. The Method by Which a District Court Determines Whether an FLSA Collective Action Merits Conditional Certification and Notice Is Not a Question of Law.

Determining whether an FLSA collective action merits conditional certification and notice is not a question of law. In *Hoffman-La Roche*, the Supreme Court “confirm[ed] the existence of the trial court’s discretion” to facilitate notice but explicitly declined to dictate “the details of its exercise.” *Hoffman-La Roche*, 493 U.S. at 170. Rather than applying a categorical legal standard, the Supreme Court left it to district courts to fulfill their “managerial responsibility to oversee the joinder of additional parties” by issuing notice in an “efficient and proper” manner based on the facts presented. *Id.*

Maximus identifies no disagreement about the meaning of any legal provision relevant to this fact-laden determination. District courts exercise discretion to manage collective actions under *Hoffman-La Roche* not according to a rigid, predetermined standard but in view of each case’s facts. *See Morgan*, 551 F.3d at 1262; *Velasquez-Monterrosa v. Mi Casita Rests.*, No. 5:14–CV–448–BO, 2015 WL 1964400, at *6 (E.D.N.C. May 1, 2015) (collecting cases). “What legal standard should the District Court apply...”—the question Maximus asks this Court to answer—is therefore not a cognizable question of law.

Recognizing as much, courts routinely deny interlocutory review of FLSA certification and notice decisions because they are not genuine questions of law. *See Piazza v. New Albertsons, Inc.*, No. 20–CV–03187, 2021 WL 3645526, at *2 (N.D. Ill. Aug. 16, 2021), *mandamus denied sub nom. In re New Albertsons, Inc.*, No. 21-2577, 2021 WL 4028428, at *2 (7th Cir. Sept. 1, 2021) (“[W]hat evidence courts should consider when determining whether a putative collective is similarly